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EXECUTIVE SUMMARY

Committee Interim Charge Number One: Evaluate the impact of NAFTA on the Texas economy and determine how different segments of the economy are affected.

Committee Interim Charge Number Two: Determine how NAFTA has affected employment and identify any employment losses or gains. Assess how the state's workforce programs have responded to any employment changes and make any necessary recommendations to improve that response.

Committee Interim Charge Number Three: Assess the impact NAFTA is having on the state's infrastructure, including but not limited to transportation, education, housing, the environment and health and human services.

Committee Interim Charge Number Four: Develop a statewide strategic response plan to the effects of NAFTA in Texas which identifies available and needed resources at the local, state and federal level and provides a coordinated response.

Lieutenant Governor Bob Bullock created the Senate Interim Committee on the North American Free Trade Agreement (NAFTA) in August 1997 to study the impact of NAFTA on the State of Texas. The central purpose of the Committee's charges from the Lieutenant Governor was to determine if NAFTA has had an impact on the Texas economy and infrastructure, and if so, what we might do on a state level to address those affects. The Committee has concluded that it is nearly impossible to separate NAFTA's impact on Texas from the general trend of globalization in world trade and production. Consequently, the Committee applied the charges to the general growth of international trade.

Part I of the report examines structural changes in Texas, both local and statewide. Part II addresses the free trade effects on Texas employment. This section also examines the differential effects of trade growth on the state's various geographic regions, and in particular the nearly crippling impact on the border region as opposed to record low unemployment rates in other areas of the state. Part III addresses the impact of free trade on Texas' infrastructure, broadly construed as transportation, education, housing, the environment, and health and human services. The Committee received compelling testimony and evidence that argues for reevaluating the state's strategies in most of these general areas.

Charge IV presented the Committee with a particular challenge given the breadth of the task of developing a statewide strategic response plan. The report addresses the issue of governance of such a response, provides a structure for responding to the infrastructure demands of free trade, and presents a menu of short term and long term investments.

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Small Business United

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Texas Association of Mexican-American Chambers of Commerce
Texas A&M Real Estate Center
Texas A&M University-Texas Transportation Institute
Texas A&M International University
Texas Department of Economic Development
Texas Education Agency
Texas Higher Education Coordinating Board

Texas Natural Resource Conservation Commission
Texas Senate Media Services
Texas Senate Research Center
Texas Department of Transportation
Texas Water Development Board
Texas Workforce Commission
Texas Senate Publications and Printing
United Farmworkers
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We also appreciate the numerous members of the public and interested parties for their involvement in this project, especially those who participated at our public hearings.

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Recommendations

Workforce

1. *The 76th Legislature should consider increasing state funding for adult literacy programs.*
2. *The 76th Legislature should consider requiring the Texas Workforce Commission to establish performance measures to evaluate the number of persons entering employment and the number of persons with earning gains after training through the Trade Adjustment Assistance and NAFTA/Transitional Adjustment Assistance programs.*
3. *The 76th Legislature should consider amending Texas Government Code §481.152 to provide that "Smart Jobs" funds should be awarded with consideration given to the relative unemployment rates in that area in the state.*
4. *The 76th Legislature should consider increasing funding for the Apprenticeship Training Program.*
5. *The 76th Legislature should consider requiring local governments to link tax abatements to the payment of "living wages" defined as an income sufficient to raise a family of four above the poverty level and provide for shelter, food and other life necessities.*
6. *The 76th Legislature should consider establishing a Texas State Technical College (TSTC) in El Paso similar to the facilities at TSTC campuses in Waco, Harlingen and Sweetwater.*

Education

Public Education

7. *The 76th Legislature should direct the State Board of Educator Certification to evaluate the use of incentives to increase the number of certified bilingual and ESL teachers and report these findings to the 77th Legislature by January 9, 2001.*
8. *The 76th Legislature should provide funds out of each annual tobacco settlement payment to Texas' existing Instructional Facilities Allotment (IFA) program, in which the state joins with local district in repaying bond debt.*

Higher Education

9. *The 76th Legislature should consider continuing line-item funding for university programs related to international trade in NAFTA high-growth areas of the state that traditionally have been underfunded.*

Transportation

10. *The 76th Legislature should consider appropriating funds for the FY99-2000 biennium to the Texas Department of Transportation (TxDOT) for the NAFTA transportation infrastructure needs of the three border transportation districts (Pharr, Laredo, and El Paso).*

11. *The 76th Legislature should consider establishing an interagency border transportation consortium to coordinate institutional planning and technological improvements at the Texas-Mexico border, working toward a “seamless border crossing” concept with other border states.*
12. *The 76th Legislature should consider directing the Department of Public Safety to significantly increase the number of truck safety inspections it conducts at border crossings and appropriate funds to increase the number of DPS License and Weight troopers and other personnel needed to conduct the inspections.*
13. *The 76th Legislature should consider passing a joint resolution inviting the appropriate federal agencies to participate in the Texas Border Transportation Consortium.*
14. *The 76th Legislature should consider lending its weight to efforts to convince the federal government to open more Customs Bureau inspection lanes at Texas border crossings and keep them open 24 hours per day.*
15. *The 76th Legislature should consider directing TxDOT to significantly increase its efforts to employ NATAP and other new technology currently used in California and New Mexico to expedite truck traffic at border crossings.*
16. *Congress and the 76th Legislature should consider authorizing the creation of border port authorities to identify and meet the critical transportation infrastructure needs of the border region. The port authorities should provide the highest quality, most efficient transportation and port commerce facilities that move people and goods within the region, provide access to Mexico and the rest of the United States and to the world, and strengthen the economic competitiveness of the Texas border region.*
17. *The 76th Legislature should consider directing TxDOT to assist efforts to establish Dedicated Commuter Lanes (DCLs) at border crossings to facilitate the transportation of binational commuters who cross the border for employment purposes.*
18. *The 76th Legislature should consider directing TxDOT to revise its funding formulas to reflect and address the damage done by NAFTA truck traffic.*
19. *The 76th Legislature should consider funding TxDOT sufficiently to mitigate the traffic congestion that has increased since NAFTA in high-impact regions and should provide funding for air-quality (CMAQ) research.*
20. *The 76th Legislature should consider providing funds to TxDOT to purchase and operate on board safety monitoring and hazardous material incident response systems to provide information to emergency personnel and other first responders concerning hazardous spills that may result from highway or rail accidents.*

21. *The 76th Legislature should consider directing all state agencies to implement a telework program for their employees.*

Rail

22. *The 76th Legislature should consider adopting a Texas Rail Policy consistent with Article 10, Section 2 of the Texas Constitution, to ensure that the majority of rail-dependent shippers in Texas have access to a competitive railroad freight market.*
23. *The 76th Legislature should consider giving the Railroad Commission of Texas (TRRC) a clear mandate to foster competition which:*
- *requires the agency to use all practical means to increase competition among rail carriers operating in Texas; and*
 - *directs the agency to represent Texas in all future decisions by the Surface Transportation Board that will affect rail cost and service in Texas.*
24. *The 76th Legislature should consider authorizing the Rural Rail Districts to be local sponsors of rail projects that increase competition for railroad freight shipments.*
25. *The 76th Legislature should consider authorizing either the Rural Rail Districts or the Railroad Commission of Texas to finance construction of rail facilities by the rural rail districts through revenue bonds paid either exclusively from rail revenues or subsidized by a special sinking fund provided by either of:*
- *a small licensing fee per rail car per terminal arrival or departure that originates or ends within the State of Texas; or*
 - *end all or part of the exemption from the diesel fuel tax now granted to railroads.*
26. *The 76th Legislature should consider requiring railroads that operate totally or partly within the State of Texas to report on the origin and destination of shipments which originate or terminate within the state for the purpose of integrating rail freight data into a statewide, intermodal transportation model.*
27. *The 76th Legislature should consider requiring TxDOT to develop an integrated, intermodal statewide transportation model for the State of Texas, and to develop an integrated, intermodal transportation plan for the State, and to present the plan to the 77th Legislature.*

Environment

28. *The 76th Legislature should consider directing the Texas Water Development Board to test the authority granted in SB 1 (75th Regular Session) for Texas to invest in water planning and water projects outside its borders, specifically in Mexico, by initiating an appropriate project in order to discover potential impediments to investment in Mexico, and to report the results to the 77th Legislature.*
29. *The 76th Legislature should consider authorizing TNRCC to encourage the location of mitigation projects in Mexico when the project will improve the environment of Texas and when a project that directly mitigates the original offence is not available. The value of a*

mitigation project under this authorization shall be calculated in U.S. dollars, and shall have a dollar value equal to or greater than a qualified mitigation project located in Texas.

30. *The 76th Legislature should consider authorizing local units of government to enter into interlocal agreements with local governments in Mexico for projects of mutual benefit.*
31. *The 76th Legislature should consider continuing its support of interagency, international, and interstate coordination to give Texas interests a voice in the management of resources within the Rio Grande Basin. To further this goal, the Legislature should consider the following steps:*
 - *The 76th Legislature should consider directing the Texas Water Development Board and the Texas Natural Resources Conservation Commission to coordinate in developing a complete water supply model for the Rio Grande. In support of this recommendation, the Legislature should consider:*
 - *funding an position at the Texas Water Development Board for border and international water issues and to develop a water supply model for the Rio Grande including underflow or riparian groundwater; and*
 - *directing TNRCC to develop a water availability model for the Rio Grande as the agency is doing for all other rivers in the State, and should direct TNRCC to include the firm yield of groundwater in the model.*
32. *The 76th Legislature should consider directing the Texas Parks and Wildlife Department to coordinate with such federal agencies as the Border Patrol, the Immigration and Naturalization Service and the Drug Enforcement Administration to mitigate environmental damage that occurs as the result of their efforts to interdict illegal immigrants and contraband along the Rio Grande.*
33. *The 76th Legislature should consider requiring the Texas Higher Education Coordinating to Board to fund research on border environmental and natural resource issues from the Advanced Research and Advanced Technology funds.*
34. *The 76th Legislature should consider encouraging Texas public colleges and universities to apply existing research resources to help find new, affordable, solutions to the increasing scarcity of water and problems with water quality, including increased salinity and fecal coliform in the Rio Grande.*

Health

35. *The 76th Legislature should consider increasing funding for preventive health programs which treat the family as a unit instead of as individual persons.*
36. *The 76th Legislature should consider encouraging “promotora” services as an integral part of publicly-funded health insurance programs along the border.*

37. *The 76th Legislature should consider increasing line-item funding for border health programs until such programs are self-sufficient.*
38. *The 76th Legislature should consider creating and funding the El Paso del Norte Border Health Institute to focus on infectious disease, Hispanic health, and environmental health.*
39. *The 76th Legislature should consider increasing the capacity to research, isolate and treat infectious diseases where facilities currently exist.*

Colonias

40. *The 76th Legislature should consider giving the Texas Water Development Board (TWDB) broad authority to initiate a colonias project where it finds no willing local sponsor or no local sponsor that has the managerial, financial or technical capacity to build and operate a system (as defined by the TNRCC's Managerial, Financial and Technical (MFT) evaluation), and to take over a project from a sponsor when poor performance jeopardizes a project. In all cases, the board should take the minimum effective action to bring a sponsor or operating entity into compliance including requiring the entity to undergo training or to take other remedial action, and the board shall adopt rules to limit the period that the TWDB will have planning or operational responsibility.*
41. *The 76th Legislature should consider requiring the Texas Natural Resources Conservation Commission (TNRCC) and the TWDB to cooperate in determining whether a service provider has the managerial, financial and technical capacity (MFT) to operate a water utility, and should give the TWDB the authority to withhold EDAP funds from providers that fail to meet the criteria of the Managerial, Financial and Technical (MFT) evaluation until the provider comes into compliance. Additionally, the Legislature should authorize TWDB to find another entity to operate such systems in order to qualify for EDAP funding.*
42. *The 76th Legislature should consider authorizing TNRCC, in consultation with the TWDB, to prohibit an operator of a water utility that receives Economically Distressed Areas Program (EDAP) funding from using water utility revenues for non-utility purposes, and should seek an injunction against any such utility operator that refuses to comply.*
43. *The 76th Legislature should consider directing TNRCC to expeditiously resolve conflicts between local service providers over who has the right to serve an area that is eligible for EDAP funding, and to give preference to the provider who has the highest rating of managerial, financial and technical (MFT) capacity, and should further direct TNRCC to give first priority to resolution of service provider conflicts requested by the TWDB.*

Housing

44. *The 76th Legislature should consider expanding funding for the five existing Self-Help Colonia Centers and additional sites based on evaluation of need by the TDHCA.*
45. *The 76th Legislature should consider directing the TDHCA to work with not-for-profit providers to increase affordable assisted living opportunities.*

46. *The 76th Legislature should consider directing the Texas Department of Health, the Texas Department on Aging and the Texas Department of Housing & Community Affairs (TDHCA) to link low-income senior housing and community services.*
47. *The 76th Legislature should consider directing the TDHCA to increase the supply of subsidized housing for the elderly by modification of its programmatic allocation formulas.*
48. *The 76th Legislature should consider directing the TDHCA to amend the LIHTC allocation plan, to provide recognition of lower operating expenses for senior housing by calculating expenses on a square footage basis rather than a per unit basis.*
49. *The 76th Legislature should consider directing the Texas Housing Finance Corporation to increase the set aside provisions of the Housing Finance Corporation from 5 to 10 percent. This increase in set aside would be used to provide more funding for low income senior housing projects that provide support services.*
50. *The 76th Legislature should consider directing the TDHCA to find ways of improving the profitability of serving low-income home buyers in the state's bond programs.*
51. *The 76th Legislature should consider directing the TDHCA to establish an owner-builder interim construction loan program in partnership with construction supply companies.*
52. *The 76th Legislature should consider directing TDHCA to increase the availability of credit counseling services for low and moderate income families for the purposes of increasing home ownership and home ownership retention.*

Small Business

53. *The 76th Legislature should consider increasing the funding to the Small Business Development Centers to retain international trade specialist personnel.*
54. *The 76th Legislature should consider creating a capital fund to loan or grant to local community development corporations.*
55. *The 76th Legislature should consider directing TDHCA to assist qualifying Texas Communities to seek designation as an NAFTA impacted community under provisions of the CAIP program.*
56. *The 76th Legislature should consider directing all state small business financing programs to be amended and/or modified so that they will complement CAIP funding efforts especially in NAFTA high impact communities along the border.*
57. *The 76th Legislature should consider directing the Small Business Development Centers to initiate and maintain contact with recipients of Small Business Administration Loans in their areas.*

58. *The 76th Legislature should consider establishing and funding foreign office representation through Texas Department of Economic Development fellowships.*

Charge I: The Impact of NAFTA on the Texas Economy

What is NAFTA?

The North American Free Trade Agreement (NAFTA), a treaty signed by the governments of Canada, the United States and Mexico, went into force on January 1, 1994. The purpose of NAFTA, like other trade agreements, was to promote the flow of goods between the three countries through regular tariff reductions. The goal of NAFTA is the eventual elimination of tariffs on thousands of products-- from energy to automobiles. For example, over a 10-year period Mexico will phase out trade and investment restrictions on autos and trucks. Upon implementing NAFTA, the United States immediately eliminated quotas for Mexican textile and apparel products that meet NAFTA rules of origin. Trade in energy is being liberalized. Numerous nontariff barriers on U.S.-Mexico agricultural trade have been replaced by tariff-rate quotas, which will be phased out by 2009. Most such reductions in nontariff barriers are proceeding on schedule.¹

NAFTA was promoted in the United States for two primary reasons: to boost the American economy and to create closer ties with our southern neighbor. Since NAFTA was implemented in 1994, America has indeed enjoyed the longest inflation-free period of growth in U.S. history. Although this economic boom is not due solely to NAFTA, many people argue that NAFTA will permit the Mexican economy to participate in the United States' growth. Proponents also argue that Mexico's continued privatization will expand trade and translate into job retention and growth. Proponents also maintained that NAFTA's passage would have noneconomic benefits for the United States as well, such as making Mexico more stable and more democratic. Four years after the implementation of NAFTA, Texas has already begun to reap the economic benefits, but the noneconomic benefits are less clear.

In addition to reducing traditional trade barriers, NAFTA obligated member countries to adopt rules for the conduct of trade. Nearly all of these "rules of conduct" are now in force. They govern areas such as the protection of direct investment, intellectual property, services trade, and government procurement. Furthermore, NAFTA includes dispute settlement provisions aimed at resolving conflicts over trade issues.²

Globalization of Trade

A paradox exists in today's global market: as international trade expands the market reach of individual countries, the more those countries are likely to form regional trading blocks. The primary motivation behind the passage of NAFTA was the worldwide trend toward formation of localized trading blocks that protect the economies of individual countries and regions. The General Agreement on Trade and Tariffs (GATT) was the sole attempt to counter this trend. GATT created the World Trade Organization, which oversees and steers the policies and objectives of GATT. In 1993, the Uruguay Round Agreement expanded GATT dramatically to such areas as trade-related intellectual property,

¹ "ITC Executive Summary on Effects of NAFTA," www.usis.it/wireless/wf970714/97071412.html. The ITC, an independent, non-partisan fact-finding federal agency, conducted its NAFTA review at the request of the Office of the United States Trade Representative.

² Id.

services, and investment measures. Improvements were also made in the rules governing other key areas of trade including anti-dumping safeguards, licensing, and customs valuation. However, the 1994 GATT revisions posed a potential threat to state laws governing agriculture, environmental protection, and transportation because GATT preempts local laws that are deemed to be inconsistent with the goals or intent of the agreement.³ As a result, Texas will have to continue its careful consideration of federal preemption authority when drafting new state laws.

Large regional trading blocks began forming in the last decade. The European Union (EU) began forming trade coalitions at the end of World War II, and passed the Single European Act in the late 1980s to further reduce the trade barriers. The result has been the continued integration of the economic systems of the 15 member countries: Austria, Belgium, Denmark, Finland, France, West Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and Great Britain.

In 1993, the European Union represented the largest trade block in the world. Americans feared that this trade block would hurt the U.S. economy because 1) the EU would favor their own trading partners' goods over America's goods; and 2) the EU was the largest trading partner for the U.S. These fears prompted the U.S. to join Mexico and Canada in creating NAFTA, a regional trade block with over 360 million consumers.

The continued globalization trend has inspired other NAFTA partners. One example is Mexico's recent Economic Partnership, Political Coordination and Cooperation Agreement signed with the European Union last December.⁴ This agreement will open Mexican markets currently dominated by American products to more European products and investment.

Additionally, Mexico and Canada have laid the groundwork for expanding NAFTA by signing an expanded free trade agreement with Chile at the Summit of the Americas on April 18, 1998⁵ that will closely track NAFTA provisions.

Last year the International Trade Commission reported that NAFTA has had a "modest positive" impact on the U.S. economy, but noted that NAFTA's consequences will not be known for many years.⁶ NAFTA's influence in Texas seems to be more pronounced-- and economically favorable. For example, the Beaumont region's three public ports have the second-highest level of Mexican imports in the nation- nearly \$2 billion worth of NAFTA-eligible goods in 1997 alone.⁷ And, about 80 percent of all

³ Robert Stumberg, "Balancing Democracy & Trade: The Impact of GATT and NAFTA on State Law," Conference on the Impact of Trade Agreements on State/Provincial Laws, November 10, 1995.

⁴ "Mexico and the European Union to Start Trade Negotiations," NAFTA Works, December 1997.

⁵ Id.

⁶ "ITC Executive Summary on Effects of NAFTA," www.usis.it/wireless/wf970714/97071412.html.

⁷ "Area ports prosper via NAFTA trade," Beaumont Enterprise, May 10, 1998.

U.S.-Mexico trade moves through Texas, creating economic growth along major NAFTA arteries, such as I-10, I-35, and the proposed I-69.⁸

Not all the effects of NAFTA have been positive, however. Some Texas communities, the border area in particular, have experienced significant job losses, consistently posting double-digit unemployment rates. While this report addresses such hardships, they have been so pronounced that the Texas Comptroller of Public Accounts, John Sharp, has issued a special report- "Bordering the Future"- to identify and evaluate the troubles seemingly unique to the region. This report applies a similar analysis.

All economies are effected in some way by changes in other countries, whether political, financial, or social. While Canada and Mexico account for almost half of Texas' exports, five of our top ten export markets are in Asia. The current Asian crisis has the potential to re-focus Texas' economic attention back to the Western Hemisphere, but so far we have not seen any signs that this is the case.

Changes in Texas since NAFTA

The Committee faced several challenges in measuring NAFTA's impact. The biggest problem in conducting an empirical assessment is the short time frame during which NAFTA has been in effect. Trade, expenditure, and output data that are used in assessing economic consequences are not available in sufficient quantity or frequency to generate an accurate picture.

Nationally, the difference in the size of the NAFTA partners' economies also complicates an analysis. Because of its size, the United States is less sensitive to shocks to its economy, such as the creation of multilateral trade agreements like NAFTA.

Finally, the effort to isolate the effects of NAFTA from the effects of other economic occurrences since the start of NAFTA in January 1994 is difficult. The Committee heard a great deal of testimony regarding export figures for Texas and the United States. Although Texas as a whole has benefitted economically from NAFTA, the greatest growth has occurred in the region north of Interstate Highway 10, which has exceeded the growth of the U.S. economy.

The general subject of exports raised the issue of the allotment of export numbers between the states where the product might originate and the state from which the export process actually starts. According to the Foreign Trade Division of the Census Bureau, there are two primary methods or series of data that are used to tabulate state exports. The source for both of these methods is called a Shipper's Export Declaration, and accompanies each commodity shipment leaving the United States. The first is called Origin of Movement (OM), and essentially is based on the zip code of the state in which the merchandise actually starts its journey to a port of export. The second is Exporter Location (EL), and is based on the zip code of the actual exporter. For example, "Company A" manufactures widgets in Michigan, warehouses them in Texas, but is headquartered in Delaware. According to the EL method, that widget manufactured in Michigan would be "credited" to Delaware. Conversely, under the OM method, the widget would be "credited" to Texas where it began its export journey.

⁸ "NAFTA brings Texas most traffic," El Paso Times, May 20, 1998 at 7D.

There is no rule or guideline as to which method should or must be used; it is purely a preference of each individual state. The Texas Department of Economic Development uses the OM method and for the purposes of this report, we will refer only to data based on the OM method.

Texas' two biggest export markets are still Mexico and Canada in that order, and together account for nearly half of all Texas' \$84.3 billion exports in 1997. In fact, Texas exports accounted for 43.7 percent of all 1997 U.S. shipments to Mexico.⁹ Texas 1997 exports to Canada totaled \$9.5 billion, a significant increase of 27 percent over 1996 figures,¹⁰ and 1997 exports to Mexico hit \$31.2 billion, an increase of 15.3 percent over 1996 export levels.¹¹ As far as U.S. exports are concerned, they too have risen steadily since the implementation of NAFTA in 1994. 1996 U.S. exports to Mexico and Canada totaled \$190 billion and comprised one-third of all U.S. exports.¹²

These figures show a continuing trend for Texas: "It is clear evidence the Texas economy is more closely integrated with the global economy each year," stated Bernard Weinstein, Director of the Center for Economic Development and Research at the University of North Texas.¹³ By all accounts, Texas and the U.S. as a whole are faring well economically since NAFTA, but NAFTA is not a solely an economic creature-- it also has human elements, and, some argue, those human elements are suffering as a result of NAFTA policies. This issue is discussed in Part II.

⁹ R. Michelle, Breyer, "Texas exports blossom by 13.9 percent," Austin American-Statesman, April 2, 1998 at A1, A13.

¹⁰ Jane Seaberry, "Texas exports surge despite Asian woes," Dallas Morning News, April 1, 1998.

¹¹ Id.

¹² Remarks by San Antonio City Councilman Roger Flores before the Joint hearing of the Senate Interim Committee on NAFTA and the House Economic Development Committee held in San Antonio, Texas, April 15, 1998.

¹³ Dr. Weinstein was a frequent witness before the NAFTA Committee hearings held across the state.

Charge II: The Effect of NAFTA on Texas Employment

It is difficult if not impossible to isolate the effects of NAFTA on the state's workforce from the effects of globalization, structural changes in production, and production shifting. Likewise, it is difficult to speak to the effects of globalization on Texas employment as a whole. While there are specific, documented instances of job loss due to globalization, many job losses are not documented. Furthermore, any analysis of the effects of NAFTA on employment would necessarily include jobs created as a result of treaty provisions. While it is generally agreed that 20,000 jobs are created for every billion dollars of exports,¹⁴ it is impossible to know how much of export related job growth is directly linked to increased trade due to NAFTA and how much is linked to general economic and export growth.

It is apparent that some areas of Texas have record numbers of displaced workers while others are clearly benefitting from our increased exports and growing economy. The overall unemployment rate for the State has decreased every year since NAFTA was signed, dropping from 6.4 percent in 1994 to 5.4 percent in 1997. Some areas had extraordinarily low unemployment. For example, the Dallas Metropolitan Statistical Area (MSA) reached an unemployment rate of 3.7 percent in 1997. Similarly, Houston and San Antonio's achieved 5 percent and 4.1 percent, respectively.¹⁵

Nonetheless, the Texas-Mexico border has had an increase or no significant change in its unemployment rate and continues to have the highest unemployment in the State. Many of these communities have unemployment rates more than twice the statewide rate. For example, the Laredo MSA had an unemployment rate of 10.5 percent, the El Paso MSA 11.2 percent, the Brownsville-Harlingen MSA 12.6 percent, and the McAllen-Edinburg-Mission MSA 18.2 percent.¹⁶ Maverick, Presidio and Zavala Counties continue to lead the nation year after year in unemployment rates.

A startling 55.26 percent of adults over 25 in the 43 county order area do not have a high school diploma or equivalent.

The Committee received testimony from various groups directly involved in workforce issues, including dislocated workers, advocacy groups, training service providers and the Texas Workforce Commission. This testimony focused on the need to improve education and training, increase wages and attract businesses in order to increase employment.

Clearly, getting and holding a job depends on one's education level. The unemployment rate for workers with less than a high school diploma is 11.5 percent compared to 2.9 percent for college

¹⁴ Dr. Khosrow Fatemi, "The Impact of NAFTA on International Trade and Education in Texas," written testimony provided to the Senate Interim Committee on NAFTA hearing held in Mission, Texas on January 14, 1998 at 5.

¹⁵ Texas Workforce Commission, Labor Market Information, <http://www.twc.state.tx.us>, Metropolitan Statistical Area Unemployment.

¹⁶ Id.

graduates.¹⁷ This fact has severe implication in the border area. While 21 percent of adult border residents have at least an associate's degree, a startling 55.26 percent of adults over 25 in the 43 county border area do not have a high school diploma or equivalent.¹⁸ This educational deficit translates into dismally low wages on the border. According to Comptroller John Sharp's report, "Bordering the Future: Challenge and Opportunity In the Texas Border Region," if the 43 county Texas border region were the 51st state, it would rank dead last in per capita income. The focus should be on Economic Development incentives that will create high wage jobs.

This Committee has concluded that the main challenge to solving the crisis on the border is education and training to prepare people for higher skill, higher wage jobs.

TWC Dislocated Worker Programs

Training the Dislocated Worker

The primary obstacle to employment for trade-affected workers is the tremendous gap that exists between their current qualifications and the qualifications required for new jobs. Not only do the majority of adults over the age of 25 in the border region not have a high school diploma or equivalent, but many are functionally illiterate in both English and Spanish. In addition, 80-85 percent of the dislocated workers do not speak English or have very limited English speaking ability.¹⁹ Many workers therefore need substantial remedial education or language instruction. However, there are insufficient programs that offer integrated *English as a Second Language* (ESL) Programs and vocational training where workers can improve their language skills while training for a job. As a result, many workers enter only language instruction courses and therefore exhaust their income support benefits before even entering vocational training. This is problematic because a large percentage of the displaced workers have families to support, making income support crucial during the training process.

To be sure, trade affected workers in Texas have many basic workplace skills. They know how to get to work on time, work in teams, follow safety procedures and report to supervisors. They also have stable employment histories, with five to fifteen years with their previous employer being common. However, many of the workers were previously employed in what are considered to be low-skill jobs, in the garment industry for example, and need substantial academic remediation to bring them to the point where they can enter available vocational retraining.

Texas dislocated workers do not fit neatly into conventional retraining programs. At its El Paso hearing, the Committee heard the poignant testimony of displaced workers who had been enrolled in training to be child care workers. These women, eager to re-enter the workforce, discovered at the completion of their training program and benefits that they had not been prepared to work in any existing jobs. Not only were they not certified to be child care workers, but there did not seem to be any indication that

¹⁷ Steven Hipple, "Worker Displacement in an Expanding Economy," Monthly Labor Review December 1997 at pp. 26,37

¹⁸ Figures derived from material presented by the Texas Workforce Commission to the Senate Interim Committee on the North American Free Trade Agreement hearing in El Paso, Texas on November 13, 1997.

¹⁹ Id.

there was work available in that area. This result seems to be related to both the time frames prescribed for the NAFTA-TAA program and to the availability of adequate and relevant training curricula.

The “Trade Programs”

Even before NAFTA was signed, certain industries employing low skilled workers left Texas and the United States for other countries. The Federal Government has created two programs, the Trade Adjustment Assistance (TAA) and the NAFTA-Trade Adjustment Assistance (NAFTA-TAA) programs. The “regular” TAA program was authorized by the Trade Act of 1974 for workers adversely affected by import competition from any country. The NAFTA-TAA program was established by the NAFTA Implementation Act of 1993 and is meant for workers adversely affected by trade with or production shifts to Canada and/or Mexico. These programs provide training, job search allowances, relocation allowances, and income support for adversely affected workers. According to the TWC, most workers are eligible for both programs. The workers, if eligible for both, can only draw benefits under one of the programs.

Between 1994 and 1997 a total of 18,846 Texas workers were certified to receive NAFTA -TAA benefits.²⁰ El Paso was home to 10,938 of these workers, and the Rio Grande Valley to 3,361 the remaining displaced workers are spread throughout the state. There are hundreds thousands of regular TAA workers in the state, however, TWC only tracks those who currently come in to their offices for service. TWC

Figure 1: TAA and NAFTA-TAA Certifications in Texas, by Industry

1. Garment (60 percent of affected workers)
2. Electronic & Electrical Components (6percent)
3. Leather & Leather Products (5 percent)
4. Glass& Pottery Products (3 percent)
5. Fabricated Metal (3 percent)
6. Industrial & Commercial Machinery & Computers (2 percent)
7. Transportation Equipment (1 percent)
8. Rubber & Plastics (1 percent)
9. Ship Repair/Conversion (1 percent)
10. Miscellaneous Products (18 percent).

²⁰ The NAFTA-TAA statistics should not be considered to be absolute measures of the impact of NAFTA on employment. The NAFTA-TAA Program stipulates this factor as a cause for worker certification, although NAFTA itself does not contain any provisions facilitating shifts of U.S. production to Mexico. As a result, TAA statistics are more accurate measures of the effect of globalization or production shifting to Mexico than they are of the actual labor impact of NAFTA.

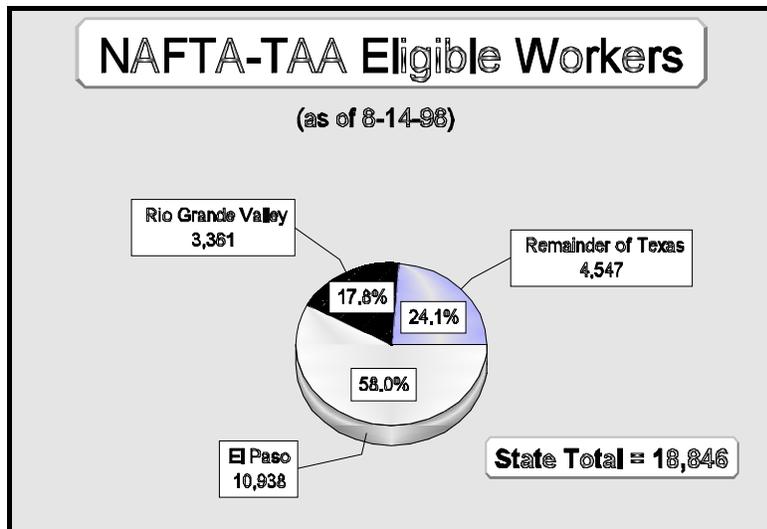


Figure 2: NAFTA-TAA Eligible Workers (source: *Texas Workforce Commission*).

provided services to 11,088 TAA and NAFTA-TAA eligible workers during the month of July 1998 and since 9-1-97 TWC has provided services to 20,386 TAA and NAFTA-TAA eligible workers.²¹

The benefits and re-employment services provided by the programs are designed to help unemployed workers prepare for and obtain suitable employment. An important component is the weekly trade adjustment allowances (TRA) which may be payable to eligible workers following the exhaustion of state unemployment and federal emergency unemployment

compensation (EUC) benefits. Usually TRA benefits will be paid only if an individual is enrolled in an approved training program, although a waiver is available for special circumstances. An eligible person can receive benefits, including UI, EUC, and TRA, for up to 78 weeks.

Under the programs, training can be provided to workers who are unable to find suitable work within their local commuting area. Training opportunities include on-the-job training, vocation or technical training and remedial education. Training must be completed within 104 weeks. This, combined with the 18 month income support window has proven to be problematic. Often, the training and income support time periods expire before vocational training is completed.

In order to become eligible for the TAA or NAFTA-TAA programs, a group of three or more workers, their union, or an authorized representative must file a petition with the U.S. Department of Labor's Office of Trade Adjustment Assistance. When the petition is received, an investigation is conducted, and if it is determined that increased imports contributed importantly to decreased sales or production and to worker displacements in a particular company, the department of Labor certifies the affected group of workers as eligible to apply for TAA.

Aside from the qualification requirements, the two programs are identical, a notable exception being that under the regular TAA program, the requirement that a worker be enrolled in approved training before receiving weekly income support payments may be waived. This waiver, which is not available through the NAFTA-TAA, allows the TWC and the worker to locate feasible and appropriate training without losing income support benefits. The NAFTA-TAA guidelines require that workers be enrolled in approved training within 16 weeks of their last day of work, or within six weeks from the time they are certified as eligible for the program by the U.S. Department of Labor, in order to be eligible for Trade

²¹ Written materials provided by Harry Crawford, Texas Workforce Commission, August 19, 1998.

Readjustment Allowances (TRA), the income support component of the program.²² Because the income support component is a critical priority for the dislocated workers, workers are sometimes enrolled in whatever training is available during the relevant time period, without time for appropriate counseling and assessment.

It is difficult to assess the efficiency of the training funded through the TAA and NAFTA/TAA programs because there are currently no performance measures required. The Texas Workforce Commission has repeatedly stated that it funds training programs but does not design them, that is the job of the service providers. Performance measures would enable the training service providers to determine what types of programs and curricula are leading to actual job placement and would allow the TWC to determine what types of programs they should fund.

As of June 30, 1998, 1,425 workers were enrolled in regular TAA approved and/or funded training programs and 1,091 workers enrolled in NAFTA-TAA approved and/or funded training programs. Workers are enrolled in the following types of training programs: English as a Second Language (ESL) (5 percent), ESL/GED-only (GED = Graduate Equivalency Degree)(23 percent), GED/ABE (ABE= Adult Basic Education)(2 percent), and Vocational Training (69 percent) which includes Administrative Clerk, Medical Record Clerk, Nurse Assistant, Computer Operator Case Aide, Data Entry Clerk, Radiologic Technologist, General Clerk, Bookkeeper, HVAC Installer-Servicer, Clerk Typist, Secretary, Transcribing Machine Operator, Computer Programmer, Microcomputer Support specialist, Accounting Clerk, Legal Secretary, Surgical Technician, Teacher Aide, Home Attendant, Nursery School Attendant, Injection Molding Machine Operator, Automobile Mechanic, Administrative Assistant, Machinist, Electronics Mechanic, Maintenance Machine Repairer, Electrician, and Tractor Trailer Truck Driver.

The El Paso Re-Employment Pilot Project and the Department of Labor Grant

In March 1997, the Texas Workforce Commission, in response to concerns of the El Paso Community and displaced worker advocacy groups, began the El Paso Re-Employment Pilot Project. The primary goal of the project was to assist trade affected workers in making the most effective use of the 24 months of NAFTA funded training.²³ More specifically, the goal was to develop retraining opportunities for displaced workers that integrate English workplace literacy with occupational skills training. The participants in the pilot project were trade impacted workers who had participated in ESL/GED courses only and had received no vocational training and who had exhausted or would exhaust their income support payments between October 1, 1996 and March 1, 1999.

Using the JTPA Dislocated Workers Services programs, the TWC provided income support payments in an amount equal to those received under the trade programs during the 26 week gap between the end of the trade funded income support payments and the trade-funded training benefits. Based on available state and federal funding, those workers who were assessed as not job ready would be eligible for and additional 12 months of training and Needs Related Payments, again using the JTPA programs.

²² 20 C.F.R. § 617 (1998).

²³ Texas Workforce Commission, "El Paso Re-Employment Pilot Project ," March 4, 1997.

Another important element of the pilot project was the vocational assessment. Each worker had a case manager assigned. An Individual Retraining Plan (IRP), a comprehensive training program that identifies strengths, weaknesses and transferable skills was developed for each worker. This helped to ensure that each worker was placed in appropriate and effective training.²⁴

Participants with limited language skills were encouraged to enter work place literacy classes. Their case manager had an obligation to transfer them to the first appropriate opening in bi-lingual vocational training or on-the-job training. Similarly, where no appropriate vocational classes or other training was available, participants were given the option of returning to or remaining in workplace literacy classes for no more than 60 to 90 days while an appropriate placement was found. Should a participant choose not to enter work place literacy agency job developers assisted the participant in finding part-time or full-time employment until an appropriate opening is available. In any event, the IRP's outlined the expected length of time a participant could expect to remain in work place literacy before moving into vocational training or an OJT placement.²⁵

In May 1998, the United States Department of Labor awarded a grant of \$45 million to assist workers in El Paso who have lost their jobs as a result of trade. The initial award was \$15 million. The El Paso PREP (Proactive Re-Employment Project) is supported by a wide variety of community organizations and in essence takes over where the Pilot Project left off. The PREP seeks to establish a comprehensive seamless delivery system for trade affected displaced workers that includes assessment, case management, job development, bilingual vocational training, intensive work related language and basic skills training and Needs Related Payments.²⁶

The El Paso PREP targets two broad groups of potential participants. Group 1 consists of trade affected workers who were in the Pilot, or never accessed trade funded training, or are currently in trade funded training. Group 2 includes Levi Strauss & Company and Hasbro workers recently laid off and just beginning to access trade benefits.²⁷ Nevertheless, the grant lays out that the only difference between the two groups once enrolled in El Paso PREP will be whether their services are paid for with JTPA funds or with TAA, NAFTA-TAA funds.

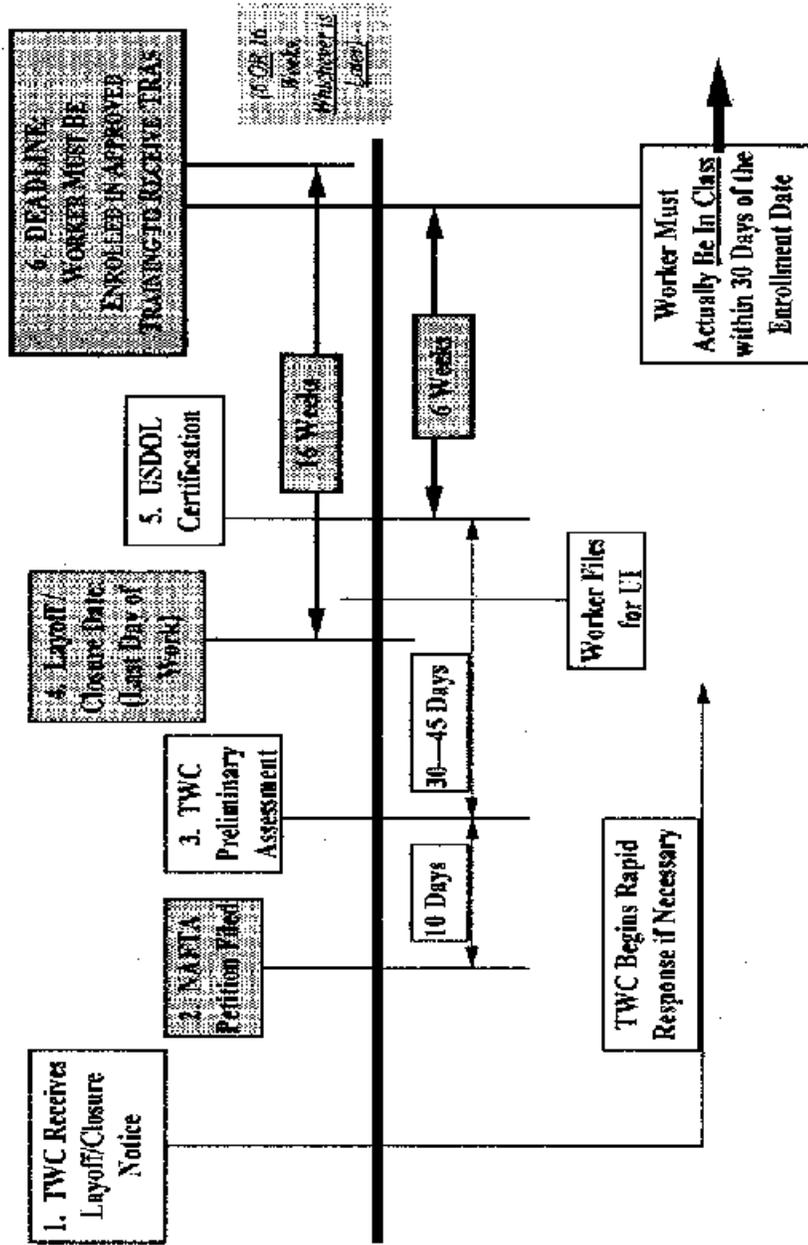
²⁴ Texas Workforce Commission. "El Paso Re-Employment Pilot Project, Briefing Paper, Update." September 11, 1997.

²⁵ Id.

²⁶ Presentation to the Upper Rio Grande Workforce Development Board, Inc. The Plan for El Paso Prep.

²⁷ Texas Workforce Commission. Memorandum from Mimi Purnell to Rick Gonzalez, Members of PREP Committee, July 30 1998.

NAFTA-TAA PROGRAM TRAINING ENROLLMENT TIMELINE



Texas Workforce Commission JTPA and Trade Programs Coordination

		TWC PROVIDES:	
TWC & WORKFORCE DEVELOPMENT BOARDS PROVIDE:		NAFTA-TAA PROGRAM	REGULAR TAA PROGRAM
PRIMARY SERVICES	<p>JTPA TITLE III RAPID RESPONSE PROGRAM</p> <ul style="list-style-type: none"> • GROUP ACTIVITY • ABREVIATED SERVICES • EARLY INTERVENTION • JOB SEARCH WORKSHOP • STRESS MANAGEMENT • FINANCIAL COUNSELING 	<p>REGULAR JTPA TITLE III PROGRAM</p> <ul style="list-style-type: none"> • INDIVIDUAL ACTIVITY • BASIC READJUSTMENT SERVICES • SUPPORT SERVICES • TRAINING/RE-TRAINING NECESSARY TO GET A JOB 	<ul style="list-style-type: none"> • TRAINING/RE-TRAINING IF NECESSARY TO GET A JOB • JOB SEARCH ASSISTANCE • RELOCATION ALLOWANCES
ELIGIBILITY	<ul style="list-style-type: none"> • DEPENDS ON CONDITIONS OF LAYOFF/CLOSURE AFFECTING 50 OR MORE PEOPLE. 	<ul style="list-style-type: none"> • INDIVIDUAL DETERMINATION PROGRAM • CONDITIONS OF LAYOFF/CLOSURE ELIGIBLE FOR UNEMPLOYMENT INSURANCE 	<ul style="list-style-type: none"> • USDOL CERTIFICATION BASED ON FOREIGN TRADE WITH ANY COUNTRY. • MAY APPLY ONLY TO SPECIFIC JOBS/OCCUPATIONS IN THE AFFECTED COMPANY.
INCOME SUPPORT	<p>TWC DETERMINES ELIGIBILITY FOR UNEMPLOYMENT INSURANCE (UI). THE MINIMUM IS \$46 PER WEEK FOR A MAXIMUM OF 26 WEEKS. THE MAXIMUM IS \$280 PER WEEK FOR A MAXIMUM OF 13 WEEKS.</p> <p>NONE</p>	<p>TWC DETERMINES ELIGIBILITY FOR UNEMPLOYMENT INSURANCE (UI). THE MINIMUM IS \$46 PER WEEK FOR A MAXIMUM OF 13 WEEKS.</p>	<ul style="list-style-type: none"> • UP TO 52 WEEKS OF "TRADE READJUSTMENT ALLOWANCES (TRAS) = UI PAYMENTS WHILE IN TWC-APPROVED TRADE-PROGRAM RELATED TRAINING. • TO RECEIVE TRAS IN THE NAFTA-TAA PROGRAM, PARTICIPANT MUST BE ENROLLED IN APPROVED TRAINING WITHIN 16 WEEKS OF THE LAYOFF DATE OR WITHIN 6 WEEKS OF THE DOL CERTIFICATION DATE.

The PREP program, like the Pilot Project, seeks to fill the gap between training and jobs and tailor local, state and federal resources to fill the unique needs of the displaced workers in El Paso. It seeks to establish a workforce development system based on a collaboration of public and private partners, including community based organization, unions, the business community and its associations, education and training providers, those who fund training and elected officials. This system attempts to integrate private and public funds into a single seamless integrated cost-effective system. Under this system:

- All eligible worker will be enrolled in PREP (funded by JTPA).
- Workers who still have trade benefits will also be enrolled (called co-enrollment) in the TAA or NAFTA-TAA programs.
- All workers will receive the same assessment.
- All workers will have an Individual Retraining Plan (IRP).
- All workers will be assigned a case manager under PREP. PREP case managers will “team staff” clients who have remaining trade benefits.
- Workers who are currently in trade funded training will have their training assignment reviewed by a PREP case manager and will receive a new assessment to ensure that their current placement is still appropriate. PREP and trade staff will work together to make sure that any change to the worker’s trade contract is handled efficiently and effectively.
- All workers who are eligible will receive supportive services from PREP.
- All workers will select from the same training institutions.
- All training institutions will be subject to the same performance standards regardless of the source of funds.
- All workers who exhaust their trade income support benefits (TRA’s)--18 months--and were enrolled in PREP within the six week window or were in training within 16 weeks of their layoff will be eligible for Needs Related Payments (NRPs) for the remaining period of training.
- All workers who are completing vocational skills training under the Pilot or trade will be assessed.²⁸

JTPA Title III

The Job Training Partnership Act (JTPA) provides job training services for economically disadvantaged adults and youth, dislocated workers and others who face significant employment barriers. JTPA seeks to move jobless individuals into permanent self-sustaining employment. JTPA operates under performance standards prescribed by the U.S. Department of Labor. JTPA funds are given in the form of block grants to the Local Workforce Development Boards, which assume control of JTPA operations in their areas.

Economic Dislocated and Worker Adjustment Assistance

The Economic Dislocated and Worker Adjustment Assistance Act (EDWAA) authorizes Employment and training assistance for workers who have lost their jobs in mass layoffs or plant closings or who have been laid off and are unlikely to return to their jobs. Services include early intervention programs, occupational skills training, job search assistance, supportive services and relocation assistance.

²⁸ Id.

Rapid Response

The Rapid Response program serves employees who have been dislocated from employment due to company closure or downsizing. For a company to qualify for Rapid Response services it must have a substantial layoff of 50 workers or more. The federal regulations covering Title II of JTPA explicitly state that Rapid Response is a state responsibility which may not be transferred to another entity. Rapid Response funds are a portion of the Governor's reserve fund. In FY 96, TWC responded to over 180 layoff notices affecting 50 or more workers and disbursed over \$2 million for Rapid Response services.

Worker Profiling and Re-employment Service

The US Department of Labor (DOL) requires states to establish and use a system of profiling all new claimants for regular unemployment compensation. The objective of the profile is to predict the probability of an individual exhausting their unemployment benefits. The purpose of this procedure is to identify claimants who will need job search assistance to make a successful transition to new employment. This also requires states to hold an individual ineligible if the individual fails to participate in re-employment services. Claimants identified as most likely to exhaust regular benefits are required to participate in re-employment services as a condition of eligibility for regular unemployment insurance benefits.

Unemployment Insurance

The Unemployment Insurance (UI) Benefits System pays unemployment benefits to eligible workers. The Federal Government establishes guidelines and pays the administrative costs from taxes collected under provisions from the Federal Unemployment Tax Act. TWC has direct responsibility for the UI program operation in Texas. The total Regular State UI Benefits paid in FY 97 was \$1,010,055,622.

Other Workforce Development Programs

Smart Jobs

Smart Jobs has proven effective in helping companies retain and retrain workers, and even to create new jobs. However, companies in counties with the highest unemployment rates have difficulty competing with companies in other areas for Smart Jobs funds. Grants are delivered on a first-come, first-served basis. While the unemployment rate is on average twice as high in border counties as in non-border counties, the region received only 12 percent of grants awarded in fiscal 1994-97. In contrast, Dallas-Fort Worth, with an unemployment rate of only 3.2 percent, received 44 percent of Smart Jobs funds. In order for Smart Jobs to be to be a true work force development initiative, as the law states, the program should concentrate in areas of the state where the workforce needs the greatest improvement.²⁹

Apprenticeship Training

The apprenticeship training programs prepares individuals to become certified skilled craft workers in occupations registered with the U.S. Department of Labor's Bureau of apprenticeship and Training. Apprenticeship training combines full-time, paid, on-the-job training under the supervision of experienced journey workers with job-related classroom instruction. Apprenticeship serves as a model for job training programs that lead to high-wage, high-skilled jobs. It offers individuals the opportunity to earn a wage while learning a skill or trade, and it provides an alternative to other education programs

²⁹ Texas Comptroller of Public Accounts, Bordering the Future, Austin, Texas , July 1998.

for those high school graduates who do not want to go to college. Records reflect that apprentices receive an 83.4 percent increase in wages over the training period of 3 to 5 years, starting from a wage of \$7.40 per hour to a final of \$13.57 per hour.³⁰

Adult Literacy- Investing in the Basics

Literacy is the most fundamental work skill. Increasing the rate of adult literacy is the most effective means of raising the wage earning ability of the Texas Workforce. However, for fiscal year 1995-1996, Texas spent only \$85 per student in adult literacy programs. The State Board of Education reports that

...adult illiteracy carries a price tag of more than \$17 billion per year as a result of lost income and tax revenue, welfare, unemployment, crime and incarceration, and workforce in the year 2000, which highlights the need to start educating adults now for a high-skill future.

Unfortunately, in FY 1997 TEA served only 228,000 adults per year, less than 3 percent of the 7 million in need.³¹ Funding is perhaps the single most important reason for this low service. In FY 1998, a typical year, Texas allocated a mere \$8,885,700 to adult literacy programs. California, which has the highest number of adults in need of literacy services, appropriated \$450 million in FY96. Florida spent \$250 million and New York appropriated \$50 million. Both have fewer adults in need of services than Texas.³²

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Chart 1: percentages of high school graduates in the population above the age of 25 (Source: *Steve H. Murdock, Department of Rural Sociology, Texas A&M University*)

Public Education

The Committee examined the effects of NAFTA on the state's educational infrastructure and discovered several problems, all of which existed before NAFTA, such as poor performance of border students on

³⁰ Texas Workforce Commission, 1997 Annual Report.

³¹ State Board of Education, Adult Literacy.

³² Id.

standardized tests, a high drop-out rate, chronic under funding, and a lack of certified teachers.³³ The NAFTA Interim Committee has found that public school finance reforms and a focus on assisting students with limited English skills has fueled substantial progress, the border region still remains behind the rest of the state in public and higher education.

Although academic performance on the border still falls behind the rest of the state, improvement has been substantial as illustrated by TAAS scores.³⁴ Additionally, the high school drop-out rate on the border has decreased 56 percent over the last five years.³⁵ Hispanic students in the border region pass the TAAS test slightly more frequently than Hispanics in the state as a whole.³⁶ Despite rapid improvement, the border area still has lower percentages of high school graduates in the population above the age of 25 than the rest of the state (see Chart 1).

Bilingual Education

More than one Texas student in eight is enrolled as Limited English Proficient (LEP), over 500,000 out of a total of 4.25 million Texas students. However, there is a serious shortage of teachers certified in bilingual and English as a Second Language (ESL) to serve students who lack the English skills they need in the classroom. Only 51 percent of bilingual students in grades 1-6 are taught by certified bilingual education teachers. The figures are even more dismal in grades 7-8 and 9-12, where only 17 percent and 9.3 percent, respectively, of bilingual education students are taught by certified teachers. Higher numbers of certified teachers will assure an adequate education for LEP students and help increase the academic performance of these students.

Public School Finance

The Legislature's efforts at equalizing school finance since 1992 have produced dramatic improvements in student performance, but the region is still behind the rest of the state, and facilities remain inadequate. As a result of the funding reforms, border districts have seen their total revenue increase by 57 percent, about equal to the improvement in the dropout rate.³⁷ However, from 1992 to 1998, the border region received only 24 percent of the state's aid for facilities despite the fact that region contains

³³ Some of the issues identified by this Committee in its examination of the education system in the border region are beyond the scope of this Committee's interim charges and time limitations and are not addressed in this report.

³⁴ Texas Education Agency. Texas Assessment of Academic Skills Number Tested and Percent Passing All Tests for All Students not in Special Education from Spring 1994 to Spring 1998. Wednesday, June 17, 1998. A 22 county survey: Brewster, Cameron, Culberson, Dimmit, El Paso, Hidalgo, Hudspeth, Jeff Davis, Kinney, Maverick, Presidio, Starr, Terrell, Val Verde, Webb, Zapata, Willacy, Kleberg, Duval, Jim Hogg, Brooks, and Zavala. Other data is available from the Texas Education Agency, Database Division, for individual requests.

³⁵ Texas Education Agency. Dropout Rates for Valley Counties and Districts, June 24, 1998. Selected counties included a 22 county survey from the Lower Rio Grande Valley up through El Paso: Brewster, Cameron, Culberson, Dimmit, El Paso, Hidalgo, Hudspeth, Jeff Davis, Kinney, Maverick, Presidio, Starr, Terrell, Val Verde, Webb, Zapata, Willacy, Kleberg, Duval, Jim Hogg, Brooks, and Zavala.

³⁶ Texas Education Agency, supra at note 34.

³⁷ Comptroller of Public Accounts, supra note 29, at 35.

well over 32 percent of the state's student population.³⁸ Low property values makes paying for adequate facilities beyond the reach of many border school districts. In 1998, border districts could raise a little less than half of the state average with a one-penny addition to their tax rates. Over half the students on the border live in districts with tax rates above \$1.50,³⁹ compared to 40 percent in the rest of the state.⁴⁰

Border districts estimate that they will need \$1 billion worth of renovations and new facilities by the year 2003, and that their current requirements total \$1.8 billion for immediate renovations and new facilities. The 75th Legislature created the Instructional Facilities Allotment program to help pay for classrooms on the border, but it fell at least \$800 million short.⁴¹

Several programs that supplement local school revenues have been helpful to the border region. One example is the Telecommunications Infrastructure Fund (TIF), implemented in 1995 to provide modern telecommunications links between rural school districts and educational resources. The TIF distributes educational technology throughout the state,⁴² and has helped border schools obtain on-line computer systems and facilities for distance learning through closed-circuit channels.⁴³ Funding for the TIF comes from the Telecommunications Providers Fee Assessment that has collected over \$272 million. This money has been used to purchase and install equipment such as Internet connections and CD-Rom programs.⁴⁴ TIF is particularly important in the border region where the population is spread out along the 950-mile Texas-Mexico border that makes physical access to adequate facilities difficult. Since the creation of TIF in 1995, the TIF Board has provided more than \$210 million to over 1500 schools in 778 school districts that include 1.7 million students, 57 institutions of higher education, and 158

³⁸ Texas Education Agency. State Aid for Facilities 1992-1993 through 1997-1998. June 18, 1998. Selected counties included a 22 county survey from the Lower Rio Grande Valley up through El Paso: Brewster, Cameron, Culberson, Dimmit, El Paso, Hidalgo, Hudspeth, Jeff Davis, Kinney, Maverick, Presidio, Starr, Terrell, Val Verde, Webb, Zapata, Willacy, Kleberg, Duval, Jim Hogg, Brooks, and Zavala. Other data is available from the Texas Education Agency, Database Division, for individual requests.

³⁹ In 1992, the Legislature instituted a funding approach to give all school districts access to similar revenue at comparable tax rates. This system assumes that property wealth of \$210,000 per student will raise sufficient revenue at a tax rate of \$1.50 per \$100 of assessed valuation to provide a basic educational program. If a district has less wealth than the benchmark, the state funds the difference on every penny of tax rate up to \$1.50. Revenue from each additional penny levied above \$1.50 comes only from the school district's local tax base.

⁴⁰ Comptroller of Public Accounts, supra note 29, at 48.

⁴¹ According to the Comptroller's surveys, the border districts indicated a need for \$1.8 billion and received \$1 billion through the IFA program leaving roughly \$800 million in unmet needs (based on surveys that were responded to).

⁴² Texas Education Coordinating Board, "Technology expected to help redesign delivery of education," Vol. XXXI, No. 2, April-June 1996.

⁴³ Id.

⁴⁴ Telecommunications Infrastructure Fund Board, "Telecommunications Infrastructure Master Plan Report," 1998.

libraries to facilitate connections to the Internet.⁴⁵

Higher Education

In 1996, there were 84 public higher education facilities in Texas, 15 of which were located along the Texas-Mexico border. South Texas receives only 15 percent of state higher-education funds despite the fact it possesses 20 percent of the general population and 22 percent of the student population.⁴⁶ Spending for each border-region student is only \$89.40, compared to \$124.53 per student for the rest of the state.⁴⁷ Only a minuscule 3 percent (15) of the 482 doctoral programs at Texas public institutions of higher education were located at border universities.⁴⁸

From 1993 to 1996, the South Texas Border Initiative (STBI) directed \$500 million of state educational funds into border higher education.⁴⁹ The STBI helped border universities expand their programs to address rapidly changing conditions along the Texas-Mexico border. The STBI, created to provide relief to one of the more historically-underfunded areas of the state, constructed 23 new buildings, renovated 6 old structures, generated 101 new degree programs including a dozen new doctoral degrees.⁵⁰ The additional funding also built a new \$23 million computer lab and generated three new engineering programs at the University of Texas at El-Paso and enabled Texas A&M International University to hire 75 new faculty members and upgrade its facilities.⁵¹

Although it has created immense benefits for the region, the STBI alone has not been able to place higher education facilities and programs on par with the rest of the state. Jerry Polinard, a political science professor at the University of Texas-Pan American at Edinburg noted, “We’re not where we ought to be, and we’re not where we want to be, but we’re not where we were.”⁵²

⁴⁵ Id.

⁴⁶ “South Texas taking some strides on education front,” San Antonio Express-News, November 28, 1997.

⁴⁷ Id.

⁴⁸ Higher Education Coordinating Board. Based on information collected from a survey of public universities although discrepancies may arise from degree labeling by the respective universities.

⁴⁹ “Border Education must remain priority,” San Antonio Express-News, December 1, 1997.

⁵⁰ San Antonio Express-News, supra at note 46.

⁵¹ San Antonio Express-News, supra at note 46.

⁵² San Antonio Express-News, supra at note 46.

With the implementation of NAFTA, there has been an increase in the literature and teaching aids available on international trade.⁵³ This increased awareness and exposure to international trade in Texas has allowed many of the universities in the state to contribute a substantial amount of timely material on international trade and business to the field. For example, the NAFTA Digest, written by the Office for US-Mexico Trade Relations at Texas A&M International University at Laredo, addresses the impact of NAFTA on Texas,⁵⁴ as does the Center for International Business Studies (CIBS) under the CIBER Program at Texas A&M University in College Station.

The implementation of NAFTA also spurred research on international commerce. One successful example is the Center for the Study of Western Hemispheric Trade, a partnership between Texas A&M University and the Austin and El Paso campuses of the University of Texas.⁵⁵ This federally-funded grant allowed Texas A&M International University, through the Center, to fund a number of research projects dealing with international issues while sponsoring more than one-quarter of the business faculty with funding for research.⁵⁶

The number of international business students increased by 51 percent statewide and 67 percent at border universities from 1993 to 1997 as attention was focused on the globalization in business.⁵⁷ On the other hand, the number of international students attending Texas public universities actually decreased by one percent.⁵⁸ The student population growth rate for both border area universities and the rest of state rose by only one percent.⁵⁹ Despite this flat growth rate, student enrollment figures illustrate that border residents are under represented in higher education institutions on the whole. Furthermore, although the growth rate of students in the border universities is on par with the rest of the state, the faculty salaries of these institutions are not.⁶⁰

⁵³ John A. Adams, Jr., "NAFTA: Its Impact on Industry and Higher Education," written testimony provided to the Senate Interim Committee on NAFTA hearing held in Mission, Texas on January 14, 1998 at 5.

⁵⁴ Fatemi, supra note 14, at 5.

⁵⁵ "University of Texas, Texas A&M University to cooperate in NAFTA trade study," Austin American Statesman, June, 10 1994.

⁵⁶ Fatemi, supra note 14, at 5.

⁵⁷ Higher Education Coordinating Board - Border region numbers are from a survey of five universities: University of Texas at San Antonio, University of Texas Pan American, Texas A&M University at Kingsville, Sul Ross Rio Grande College, and Sul Ross State University.

⁵⁸ Higher Education Coordinating Board. Based on numbers including undergraduate and graduate levels for surveyed schools.

⁵⁹ Higher Education Coordinating Board. Based on the data available surveying 84 Texas public universities, community colleges, and technical schools for a period of two years.

⁶⁰ Higher Education Coordinating Board. Based on figures provided including the salaries of full professors, associate professors, assistant professors, instructors, teaching assistants, and others at 35 Texas universities.

Charge III: NAFTA's Impact on Texas' Infrastructure

Transportation

NAFTA has increased traffic, the number of accidents and the cost of maintenance on Texas highways and created a pressing need to develop transportation alternatives to roads. The common theme at each of the Senate NAFTA Committee's hearings across the state is best summarized as

The entire nation benefits due to the increased...trade among NAFTA trading partners... [b]ut Texas highways and motorists bear the greatest burden in terms of traffic safety, clogged highways and increased maintenance costs.⁶¹

The most persistent request was for transportation infrastructure and dollars to deal with these increased traffic problems. Texas has borne the brunt of the dramatic increase in international trade traffic. Almost 80 percent of all U.S. trade with Mexico passes through Texas ports of entry. At the same time, Texas' total exports increased 68 percent, from \$50 billion in 1992 to over \$84 billion in 1997.⁶² It is important to note that total Texas exports give a more accurate picture of the demands on Texas infrastructure than does Texas-Mexico trade alone, which accounts for approximately one-third of Texas' total trade. Demands on Texas transportation infrastructure have increased proportionately. Texas' gross domestic product grew from \$405.64 billion in 1990 to \$521.25 billion in 1997, an increase of over \$115.61 billion.⁶³

Almost 80 percent of all U.S. trade with Mexico passes through Texas ports of entry.

To assess the impact of international trade on the state's highways, the Legislature passed Senate Bill 566 (Truan) in 1997, requiring the Texas Department of Transportation (TxDOT) to conduct a study of the origin and destination of highway freight shipments. The **Statewide Commodity Flow Model** is a \$700,000 project which will provide a model of passenger flow and freight commodity flow throughout the state, and

will review multiple modes of transportation.⁶⁴ The study will identify highways that need to be designated for construction, expansion and maintenance and consider costs necessary to accomplish improvements. In addition, TxDOT has established a network of fixed data collectors and mobile

⁶¹ "NAFTA clogs highways," Waco Tribune Herald, May 25, 1998.

⁶² Texas Department of Economic Development, Business Development Division, Economic Information Clearinghouse, Highlights of 1997 Texas Exports: Trends, Statistics, Analysis, Austin, Texas, 1998, Table 1.1 at 1,2.

⁶³ Texas Comptroller of Public Accounts, "Economic Forecasts, Fall 1997," <http://www.cpa.state.tx.us/ecodata/>.

⁶⁴ Robert Cuellar, Acting Executive Director, Texas Department of Transportation, Testimony before NAFTA Committee in Mission, Texas, January 14, 1998.

counters placed in specific locations to gather data on traffic volume, traffic weight and vehicle type. This data will contribute to a greater understanding of traffic flow.

The Texas Transportation Commission has repeatedly stated that it has only enough funding to pay for one-third of the needed road improvements. Consequently, many maintenance projects are neglected, compounding existing damage.

Texas has been actively pursuing a greater share - some would say its fair share - of federal transportation funding. The fair share is variously interpreted as a dollar-for-dollar equivalence between what Texas pays in federal gasoline taxes or a share that reflects the fact that 80 percent of U.S. trade with Mexico passes through Texas.

Congress recently passed a six-year federal funding bill entitled the Transportation Equity Act for the 21st Century or "TEA-21" which allocates over \$1.88 billion to Texas over the next six (6) years, in addition to discretionary funding.⁶⁵ Examples of discretionary funding include a program to improve the movement of people and goods across the Mexican border and a program to plan, design and construct corridors of national significance for international trade.⁶⁶ The Secretary of Transportation can distribute discretionary money for any of the 43 approved high priority corridors or approve applications for intermodal projects.

Table 1: Texas Transborder Freight Data
(Value in Millions of Dollars-\$)

	1995	1996	1997
All Surface Modes -Total	42,580	50,643	57,014
Exports to Canada	5,485	5,905	7,413
Exports to Mexico	18,745	23,560	26,571
Imports from Canada	4,113	4,682	4,852
Imports from Mexico	14,237	16,496	18,178
Truck--Total	35,582	41,580	47,485
Truck Exports to Canada	4,532	4,849	5,977
Truck Exports to Mexico	16,357	20,545	23,372
Truck Imports from Canada	2,103	2,398	2,742
Truck Imports from Mexico	12,590	13,788	15,345
Rail--Total	4,986	6,088	6,434
Rail Exports to Canada	902	898	1,101
Rail Exports to Mexico	2,266	2,921	2,993
Rail Imports from Canada	968	1,011	1,215
Rail Imports from Mexico	850	1,258	1,124

* Rounding accounts for differences in summed totals and individual totals.
 * Note that data between 1993-1996 **are inflated**, compared to 1997 data, because they include transshipment activity (i.e., shipments which entered or left the United States by way of a U.S. Customs port on the northern or southern borders but whose origin or final destination was other than Canada or Mexico). **Data beginning with January 1997 do not include transshipment activity.** Users should note these difference before comparing figures for 1993-1996 with 1997 and subsequent year data.

Source: US Department of Transportation, Bureau of Transportation Statistics, Transborder Surface Freight Data.

⁶⁵ "TEA-21: Transportation Equity Act for the 21st Century," Pub. L. No. 105-178, §1101, (1998).

⁶⁶ "President Clinton Signs Transportation Bill for Twenty-First Century," U.S. Department of Transportation Press Release 109-98, June 9, 1998.

The “National Corridor Planning and Development and Coordinated Border Infrastructure Program” targets border states for special discretionary funds for infrastructure or operations that improve flow of goods “in the vicinity of the border.” Unfortunately, the total amount allocated over the next five years is \$700 million nationwide, or \$140 million per year.⁶⁷

The Texas Transportation Commission has only enough funding to pay for 1/3 of the needed road improvements.

Intermodal spending is eligible under a number of funding categories throughout the bill, and actual spending will depend on applications from states and metropolitan planning organizations (MPOs). TEA-21 also adds connections to intermodal facilities to the interstate highway system.

Additional funding for Texas’ share of TEA-21 includes \$250 million over the next six years for mass transit, a 60 percent increase over the previous six-year transportation plan.⁶⁸ Texas will also receive \$518,203 per year for other transportation programs to strengthen cultural, aesthetic, and environmental aspects of community transportation systems.

The 75th Legislature made it easier for economically-disadvantaged counties to access state and federal transportation money through a provision in the Sunset Bill for the Texas Department of Transportation, Senate Bill 370. That provision allows the Texas Transportation Commission to adjust the federally-required 10 percent local match for communities who can show an inability to meet the matching requirement, but still desperately need the transportation projects.⁶⁹ Although this provision makes it easier for poorer communities to receive transportation dollars, it does not necessarily address the political aspect of awarding projects, where larger communities like Dallas or Houston or Austin traditionally attract a disproportionate share of transportation funding.

Texas has 14,508,884 lane miles of interstate highways (length times number of lanes).⁷⁰ Keeping these roads in good condition is expensive. In FY 1998, Texas spent \$467,800,320 on construction and \$142,053,157 for maintenance and facility project expenditures on the interstate system.⁷¹ Texas’ regular U.S. highways run 12,100 miles, state highways, 16,200 miles and farm-to-market roads, 40,800 miles. Its 4,500 miles of frontage roads exceed that of any other state.⁷²

⁶⁷ “TEA-21,” *supra* note 65, at 9.

⁶⁸ Christi Harlan, “State sets road plans as highway bill signed,” *Austin American-Statesman*, June 10, 1998.

⁶⁹ Tex. Transp. Code Ann. §222.053 (Vernon 1998).

⁷⁰ Data provided by Steven Polunsky, Analyst, Texas Department of Transportation, Sept 15, 1998.

⁷¹ *Id.*

⁷² Texas Comptroller of Public Accounts, “Thunder Roads,” *Fiscal Notes*, May 1998 at 1, 10.

Texas also has the most trucks traveling its roads of any other state. TxDOT reports that I-35 is operating at or above capacity due to interstate freight traffic. The incidence of overweight vehicles carrying construction materials and equipment has increased from 3,237 in 1990 to 11,944 in 1997, according to the number of overweight permits issued.⁷³ The Texas limit is 80,000 pounds for interstate highways. An operator may purchase a special overweight permit that allows greater weight on non-interstate highway roads. A study by the Texas Transportation Institute at Texas A&M University found that an 84,000-pound truck causes about \$2,000 more damage per year than trucks operated within the load limit for county highways (58,000 pounds).⁷⁴ The fee for an overweight truck is \$75. Obviously, the cost of road repairs vastly exceeds the fees collected from the trucks that cause the damage, and only contributes further to the gross difference between funding needs and funding availability.

Corridors

Two transportation corridors in Texas have been federally certified as natural NAFTA trade routes by virtue of the significant freight traffic growth they have experienced. I-35 from Laredo to Dallas (ending as a U.S. highway near Duluth, Minnesota, then continuing into Canada) is the major north-south corridor. The proposed I-69 reaches from the Rio Grande Valley through Houston and north to Texarkana. A third corridor in the region is the "El Camino Real" from Chihuahua City to Santa Fe, passing near El Paso. The final proposal, still tentative, is "La Entrada al Pacifico," from Topolobampo to the Eastern U.S. Each corridor has its own unique characteristics: I-35 is developed but overloaded. It travels through major metropolitan areas and is in need of both road and rail relief routes. I-69 is undeveloped and currently only has interstate designation in its northernmost section, but would connect Laredo and the Valley with Houston, the upper midwest and the east coast.

I-69 is a proposed 1800 mile-route that would run through eight states and connect the Great Lakes to the Rio Grande Valley. In Texas, I-69 would include U.S. 281 and US 77, and would reach Houston via U.S. 59 before continuing northeast to Shreveport, Louisiana, to Memphis Tennessee, and Indianapolis where it would join the existing I-69 that ends at Port Huron, Michigan, about 60 miles northeast of Detroit. Thereafter, it joins an interstate-quality road that connects Toronto, Montreal and Quebec. Mexican highway connections to I-69 include two primary highways to Monterrey that are directly accessible from Laredo and the Rio Grande Valley, an existing highway to Guadalajara and the Port of Manzanillo; and another to Ciudad Victoria and Mexico City.

A 1995 study estimated the completion cost of I-69 from Evansville, Indiana to the Lower Rio Grande Valley at \$7.2 billion, but rendering a high benefit-cost ratio of \$1.57. A benefit-cost ratio is how much an investment yields per dollar, so every dollar invested in developing the I-69 route, will reap \$1.57.⁷⁵ The proposed I-69 corridor currently accounts for over 38 percent of the dollar value in truck-borne

⁷³ Information provided by the Texas Department of Transportation (as of June 3, 1998).

⁷⁴ William W. Crockford, "Weight Tolerance Permits," Report # FHWA/TX-94-1323-2F, November 1993 (published by Texas Transportation Institute/ National Technical Information Service, Springfield, Va.)

⁷⁵ Robert Cuellar, Acting Executive Director, Texas Department of Transportation, Testimony before NAFTA Committee in Mission, Texas, January 14, 1998.

trade with Canada and Mexico.⁷⁶ On the U.S.-Canada border, northeast ports between Michigan and Maine handle nearly 87 percent of the truck traffic between the U.S. and Canada.⁷⁷ This number would obviously increase with the addition of the Texas international border ports from Laredo through Brownsville, which account for over 45 percent of all truck trade with Mexico. The I-69 corridor in Texas also represents 38 percent of the state's retail sales, 39 percent of personal income, and 39 percent of the workforce, and almost one-third of the state's population.⁷⁸

Although TEA-21 high priority projects for Texas include \$41 million over six years to upgrade the I-69 route, there is still a huge cost facing Texas. Locally, the cost to expand the 199 miles of US 77/SH 44 that would become part of I-69 from Victoria down through South Texas is estimated at \$336 million, while the improvement costs for the 146 miles of US 281 are estimated at \$257 million.⁷⁹ This investment will bring enormous economic benefits to the South Texas region, which is home to communities with the highest unemployment rates in the state. The 77/281 region generates \$41.6 billion in economic activity, and contains three deep sea ports and nine international bridges that handle 28 million vehicle crossings per year.⁸⁰ Nearly one-third of the state's population, or 5.5 million, live in the 34 counties directly on the I-69 route, and an estimated 7.2 million citizens would be favorably affected.

Development of the I-69 corridor will also positively impact traffic safety. The estimated improvement in safety numbers runs as high as 1,300 lives saved; 57,000 injuries avoided; and avoidance 80,000 accidents in which only property is damaged. It is also estimated that travel time between South Texas and Indianapolis would be reduced by as much as 4 hours one-way (2 hours in Texas alone), affecting 67 counties on or adjacent to the I-69 route in Texas.

Intermodal connections will be a vital part of I-69's success as a NAFTA corridor. Major railroad freight terminals are available at many locations along the corridor, such as Indianapolis, Evansville, Memphis Corpus Christi and Houston. Unfortunately, the current rail component of the I-69 corridor from Laredo to Houston via Corpus Christi is served by only one monopoly railroad, the Union Pacific, and one small carrier, the Texas-Mexico Railroad, which has rights to use the Union Pacific track.

Several key waterports also lie along I-69's route, such as Memphis, Corpus Christi, Brownsville and Houston. Other Texas ports affected include: Orange, Port Arthur, Texas City, Beaumont, Freeport, Galveston, Port Lavaca, Matagorda, Port Mansfield and Harlingen. It is also projected that I-69 will serve several key defense bases: Crane Naval Surface Warfare Center in Indiana; Fort Campbell in Kentucky; Milan Arsenal; Memphis Defense Depot in Tennessee; and Fort Polk and Barksdale Air

⁷⁶ "Interstate 69 Initiative," presentation by Randy DeLay before the Senate Interim Committee on NAFTA hearing held in Corpus Christi, Texas on February 10, 1998.

⁷⁷ Id.

⁷⁸ Id.

⁷⁹ "US 77/US 281 Options for Routing Proposed I-69 Extension through South Texas to Mexico," prepared for the 77/281 Coalition by Shiner, Moseley & Associates and Carter-Burgess, May 1995 at 19.

⁸⁰ Id. at 11.

Force Base in Louisiana.

I-35, unlike I-69, is a fully completed highway extending 1,550 miles from Duluth, Minnesota to Laredo, Texas, with several key intermodal facilities along its route- such as the Dallas/Fort Worth International Airport (the world's second busiest passenger facility) and the intermodal hubs planned for San Antonio and Kansas City.

One-third of Texas' population- 6.2 million or more- live within the 21 counties on the I- 35 route.

While I-35 remains the most important north-south highway in the U.S., the main task facing I-35 is to re-route much of its highway and rail traffic around already congested areas. I-35 runs 580 miles through 21 Texas counties including four of the six most populous in Texas. Fully one-third of Texas' population, 6.2 million or more- live within the 21 counties on the I- 35 route.

Unfortunately, I-35 also has a large portion of the total number of accidents in the state. For example, the 80-mile stretch of I-35 from San Antonio to Austin saw 4,768 accidents in 1997 including 43 fatalities and 2188 injuries.⁸¹ I-35 from San Antonio to Austin has the dubious honor of having the slowest average speeds along the entire Interstate, as traffic has increased 754 percent since 1960. To alleviate traffic nightmares along this specific stretch of I-35, a new alternate route is being proposed called State Highway 130. SH130 would run east of I-35, from just north of San Antonio to Georgetown, Texas. It is estimated that SH130 will help alleviate the traffic congestion along the Austin-San Antonio I-35 corridor that currently costs highway users more than \$194 million per year in operating costs and lost opportunities.⁸² If uncorrected, costs are projected to climb to \$456 million by the year 2010.⁸³

Mexican Highways also provide a vital trade link with trade moving along I-35.⁸⁴ 25 percent of exports originating from Mexico are manufactured in Monterrey, and 50 percent of all Mexican exports come through Monterrey. Monterrey, larger than Houston and Dallas combined, is tied directly to the US 281 leg of I-69. However, Mexico has already invested \$280 million in the four-lane toll highway linking Monterrey with Reynosa which borders the Valley at McAllen. Reynosa leads all of Mexico in the percentage increase in the number of new maquiladoras.

A third corridor is the El Camino Real Corridor Initiative, that would run 600 miles along a centuries-old trade route from Chihuahua city to Santa Fe, New Mexico. Six major cities sit along that route: Chihuahua City (750,000 population), Juarez (1.2 million), El Paso (660,000), Las Cruces (100,000)

⁸¹ "New funding guidelines to decide I-35's share of \$216 billion pie," Austin American-Statesman, June 5, 1998.

⁸² Bernard L. Weinstein, Ph.D. and Terry L. Clower, Ph.D. of Weinstein and Associates/ Dallas, Texas, "Economic Impact Assessment of the Proposed Austin-San Antonio Corridor Project," August 1997 (executive summary).

⁸³ Id.

⁸⁴ Information provided by the McAllen Chamber of Commerce, the McAllen Economic Development Corp., and the Michael Blum Company.

Albuquerque (384,736) and Santa Fe (55,859). The combined economic output of these communities is \$40-50 billion annually. This corridor seeks to take advantage of the huge maquila industry lying just south of El Paso by linking the maquilas with key U.S. cities in the western United States.

One final corridor being promoted, although not officially in place yet, is "La Entrada al Pacifico." It is a coalition consisting of West Texas citizens along the Midland-Odessa route of I-27 from the Mexican port of Topolobampo to the eastern U.S., thus connecting to key Asian markets. During the last legislative session, part of I-27 was officially designated by the State as the future route of "La Entrada al Pacifico."⁸⁵

Intermodalism

Because so much NAFTA trade flows through Texas, Texans have had to re-think traditional means of moving goods. This has meant a focused effort to develop facilities that can accommodate more than one mode of transportation at their location, i.e., intermodalism.⁸⁶ Among the different aspects of intermodal trade, the Committee received testimony about the benefits of creating international trade compliance centers (ITCC) to serve as inspection points for an import/export compliance system where various levels of government could conduct their inspections away from the crowded border crossings.⁸⁷ Under a master prototype, each region would tailor the ITCC to its individual governmental and climactic needs. In Texas, San Antonio is seeking to develop a major ITCC at the former Kelly Air Force Base, which would also serve as a testing center for Intelligent Transportation Systems. Complementing this is the concept of a "distribution/fulfillment center," which essentially targets smaller businesses who usually do not have the resources to build or buy their own. The benefit is that goods can be delivered to one of these distribution centers by any means and moved on by any means. For example, the center could receive bulk shipments from manufacturing facilities, sort and store them based on mode of transportation.

TxDOT testified before the Committee on several occasions regarding how the department has incorporated intermodal activities into their overall transportation plan. TxDOT described several initiatives to address freight flow and multimodal systems including assessment of current best practices to achieve seamless connectivity between intermodal facilities (begun in the fall of 1997). Also underway is a cooperative study with the LBJ School of Public Affairs regarding seaports to determine needed connectors from docking facilities to roads at both the Port of Corpus Christi and the Port of Brownsville.⁸⁸

⁸⁵ Tex. H.B. 2115, 75th R.S. (1997). Effective 6-9-97.

⁸⁶ The issue of rail as an element of any intermodal policy is addressed in the next section exclusively.

⁸⁷ North America's Super Highway Coalition, "Innovative Transportation Solutions," March 1998 (executive summary).

⁸⁸ Robert Cuellar, Acting Interim Director for TxDOT, written testimony submitted to the Senate Interim Committee on NAFTA Hearing, Mission, Texas, January 14, 1998.

Canada has been developing its intermodal freight system for almost 50 years, beginning with major railways hauling truck trailers on flat cars.⁸⁹ However, it was “the containerization of trans-oceanic freight that has provided the critical volume to push development of intermodal infrastructure,” and has doubled the tonnage moving through Canadian ports every ten years.⁹⁰

Border-Crossing Technology

The persistent logjam of trucks and other vehicles at almost every bridge on the Texas-Mexico border is another impediment to trade and economic growth. The goal of seamless border crossings is thwarted by vehicular congestion, safety inspections, drug interdiction and customs inspections. In many places such as Laredo, where an average of \$65 million in goods funnel through the city every day across three international bridges,⁹¹ delays are exacerbated by inadequate infrastructure and insufficient law-enforcement personnel. Several possible solutions were presented to the Committee- primarily centering on the use of technology.

In many places such as Laredo, an average of \$65 million in goods funnel through the city every day across three international bridges.

One means to improve the flow of traffic across the border is to use computers and telecommunications technology to facilitate or eliminate conventional border inspections. Technological solutions are generally called “Intelligent Transportation Systems” (ITS), which will receive \$1.282 billion over the next 6 years from TEA-21. One ITS project is the International Trade Data System (ITDS) which includes several technology projects being tested at a number of border crossings. ITDS is an interagency

initiative of the National Performance Review, whose goal is to improve the processing of international trade transactions in the U.S. One of the many projects initiated to meet this goal is the North American Trade Automation Prototype, or NATAP.⁹² Through NATAP, shippers will transmit information concerning a truck, its contents, origin, crossing location, destination, driver, and other relevant details via computer to U.S. Customs. Before leaving the original terminal, the truck will be sealed electronically. En route, the truck will be tracked through use of an on-board radio transponder. At the border crossing, customs officials will have all the information needed to clear the truck through the border.⁹³

⁸⁹ Kristine Burr, Director General-Surface Policy, Transport Canada, testimony before the OECD Conference on Intermodal Transport Networks & Logistics in Mexico City, June 3-5, 1997 (resubmitted with permission to the Senate Interim Committee on NAFTA hearing in Houston, Texas, October 13, 1997).

⁹⁰ Id.

⁹¹ Anna Wilde Matthews, “NAFTA Reality Check: Trucks, Trains, Ships Face Costly Delays,” Wall Street Journal, June 3, 1998.

⁹² Article 5-12 of NAFTA states that the countries shall co-operate in the harmonization of data and processes in order to realize the benefits of NAFTA.

⁹³ Robert Ehinger, Director of the International Trade Data System Project Office with the U.S. Department of the Treasury, testimony before the Senate Interim Committee on NAFTA, San Antonio, Texas, April

Another example of the use of technology to improve traffic flow is the Transguide system currently used in San Antonio. That system uses interactive cameras and signs to warn and divert traffic in case of accidents or backlogs. Another example is the Texas Department of Transportation's joint project with the Texas Department of Public Safety to build an automated weigh-in-motion sorter system that will efficiently detect commercial vehicle weights.⁹⁴ The federal government through the Federal Highway Administration, is also getting into the act with its pilot project permitting motor carriers to use satellite tracking systems and similar technology.⁹⁵ This will record and monitor hours of service by truck drivers, and in time would replace the handwritten log books that are currently required in the federal motor carrier safety regulations.

TxDOT has developed a strategy to guide the development of Intelligent Transportation System (ITS) proposals. Commercial vehicle operations are a key element of this strategy and will most directly affect trans-border commerce. At least nine ITS technologies have been identified as having potential in this regard:

1. *Commercial vehicle clearance* can facilitate border clearance and minimize stops and could eventually include automated enforcement of weight limits and credentials, as well as automated permitting (The International Trade Data System);
2. *Automated roadside safety inspections, on-board safety monitoring and hazardous material incident response systems* can facilitate roadside safety inspection; assess the safety status of a commercial vehicle, its driver and cargo; and provide information to emergency response systems. These systems typically work in conjunction with the electronic clearing systems. Hazardous materials response systems are especially important for giving first responders and other emergency personnel prompt information for dealing safely with hazardous materials spills;⁹⁶
3. *Commercial vehicle administrative process* provides for electronic purchase of credentials and permits and for automated mileage and fuel reporting/auditing;
4. *Commercial fleet management systems* provide communication and information among drivers, dispatchers and intermodal transportation providers;
5. *Weigh-in motion stations* weigh commercial vehicles while they are moving and direct only those which exceed the maximum legal limit into the weigh station;
6. *ITS traffic management systems/centers* include devices for monitoring traffic flow, identifying and interpreting traffic disruptions, and optimizing change traffic patterns;

15, 1998.

Jeff D. Opdyke, "Freight Expectations: Laredo Will Ride On Despite Shake-Up," The Wall Street Journal, August 12, 1998.

⁹⁴ Carlos Lopez, Texas Department of Transportation, testimony before Senate Interim Committee on NAFTA hearing, San Antonio, Texas, April 15, 1998.

⁹⁵ Janet Kumer, "Transportation Secretary Slater Announces Project Using Satellite Tracking to Manage Hours of Service by Drivers," Federal Highway Administration press release, May 14, 1998.

⁹⁶ Testimony provided by Mr. Dale Everitt, Vice President, Operation Respond Institute, Inc., to the Senate Interim Committee on Transportation, August 4, 1998.

7. *Electronically evaluate immigration status* using existing technologies such as those in the ALERT (Advanced Law Enforcement Response Technology) program. This technology could be used to check immigration status much as it is now used to check driving and vehicle records at a traffic incident;
8. *Electronic connections between border crossings, highways and major rail connections*, as well as other communications systems among various modes of transportation, have the potential to improve cross-border commerce; and
9. *NATAP*, or the North American Trade Automation Prototype, arose out of efforts to standardize data, documents and processes for customs clearance, and is just one element of the seamless border concept. It is critical because there are over 100 federal agencies alone involved in international trade. NATAP uses dedicated truck lanes and electronic means to process entries and inform the driver whether to continue or stop for an inspection. There are two northern border NATAP sites and four NATAP test sites on the southern border. El Paso and Laredo are the Texas sites. All the electronic hardware and system components are in place. Another feature of NATAP is the integration of government processes which is now possible because of the standardized data.

Some of these technologies are already being tested at border crossings in both Laredo and El Paso by the TRIBEX (Texas Regional International Border Electronic Crossing) partnership created between the Federal Highway Administration and five private firms. TRIBEX is a technology demonstration project with the ultimate goal of establishing a foundation for the efficient movement of goods throughout the continent.⁹⁷ This will be accomplished by charging TRIBEX with testing and refining such projects as the commercial vehicle ITDS technology at the Columbia-Solidarity Bridge in Laredo, the Lincoln-Juarez Bridge also in Laredo and the Zaragosa Bridge in El Paso. Phase one of TRIBEX will test registration and insurance checks for participating carriers. Phase two will include safety and other items.

ITS technology will not resolve all of the trans-border commerce issues, even though similar demonstration projects in California and along the Canadian border have shown that ITS technologies work and will go a long way toward improving the experience at Texas' borders. While technology can expedite the execution of public policy through toll collection and vehicle weighing, it cannot resolve the institutional bureaucracy in many of the state and federal agencies with jurisdiction at the border. For example, TRIBEX is not designed to evaluate or recommend changes to agency policy and procedures. Consequently, institutional policy looms as the larger and more complex issue when trying to create a seamless border.

In fact, policy barriers created by the myriad public and private sector entities with a stake at the border could delay the timely deployment of technologies designed to expedite commerce. Public sector entities include the U.S. Customs, the U.S. Department of Agriculture, the Immigration and Naturalization Service, the Interstate Commerce Commission, the U.S. Border Patrol, the U.S. Department of Transportation, the U.S. Department of Commerce, the Environmental Protection Agency, TxDOT, and the Texas Department of Public Safety (DPS).

⁹⁷ Irene Rico, International Transportation Programs Engineer for the U.S. Department of Transportation, Federal Highway Administration, written testimony submitted to the Senate Interim Committee on NAFTA, April 8, 1998.

Each agency faces its own difficulties with procedures, infrastructure and/or personnel. The DPS, for example, faces a substantial shortage of resources for patrolling the border. Testimony during the Committee's public hearings indicated that the DPS was only able to inspect one percent of Mexican trucks coming into the U.S. Despite their request during the last legislative session for funding for 127 trooper positions, DPS was funding for only 5 trooper positions.⁹⁸

In addition, TRIBEX put technology in place at the border with little collaboration with the DPS. Concern remains that automated technology does little to impede drug smuggling- the primary focus of the federal officials at the border. The DPS has also been insistent that automated systems should address the standard Commercial Vehicle Safety Alliance inspection procedure for commercial vehicles.

There are significant economic and political impediments to facilitating border crossings. The warehouses, drayage companies and brokerages whose stock in trade is to move goods through inefficient border crossings are a major part of the border economy. Furthermore, U.S. trucks are not yet authorized to operate in Mexico, and Mexican trucks are limited to the immediate border area. Truckers and truckers' organizations on both sides of the border oppose opening either nation's highways to the other's trucks. None of this opposition is likely to disappear.

At present, no official entity has been charged with integrating multi-agency policy or with resolving cross-cultural issues, although there are a few governmental, quasi-governmental and private entities such as the U.S.-Mexico Border Affairs Office of the U.S. Department of State, the Border Trade Alliance and the Council of State Government-West's new Committee on Southern Border Affairs. No one group, however, has both the authority or representation to make an omni-border group possible- and then there is the question of local politics and fractionalization of interests. Each of these groups is relatively new, and there is no single Texas-based interagency consortium available to look at both the technological and institutional issues surrounding cross-border commerce. With active participation from relevant state agencies along with input from federal agencies, the private sector and TRIBEX, a consortium could look at the issues from all sides and be prepared to propose workable solutions that take into account competing interests. Only then, will NAFTA fulfill its promise of free trade and seamless borders.

Bridges

With 80 percent of all NAFTA trade moving overland through Texas, that trade must eventually cross our international bridges. Despite the acknowledgment that technology would greatly benefit the flow of goods, the element of geography still plays a crucial part in establishing successful, efficient bridge crossings.

Mr. Remo Mancini, Vice President of the Ambassador Bridge in Detroit, Michigan provided detailed testimony regarding the

The Ambassador Bridge has seen even greater increases as two-way trade between the two countries increases, and now carries about \$1 billion in goods per day.

⁹⁸ Figures provided by Department of Public Safety, based on Appropriations figures from the 1997 Legislative Session.

workings of that bridge, which moves more traffic in one week than all of Texas' bridges move in one month. This is 30 times the traffic across Texas' busiest three bridges in Laredo. More than 26 percent of all trade between the U.S. and Canada moved across the Ambassador bridge in 1996 and 1997.⁹⁹ The Ambassador Bridge has seen even greater increases as two-way trade between the two countries increases, and now carries about \$1 billion in goods per day.¹⁰⁰



Chart 2: Export & Imports - California through Texas

Source: Texas A&M International University and the U.S. Department of Commerce

The Ambassador Bridge's success in moving goods and people is primarily due to the multitude of inspection facilities located both before and after the bridge on each side to allow trucks to pick and choose which facility they will stop at, preventing logjams before they begin. The Ambassador Bridge has the distinct geographic advantage of acting as a "funnel" through which traffic must flow, while the 950-mile long Texas-Mexico border offers a plethora of crossing choices, with the majority of crossings found in Laredo or the Lower Rio Grande Valley. The concept of multiple inspection stations- where DPS, Customs, INS, DEA and other governmental agencies may work side by side- is one concept that would benefit Texas international bridge crossings immensely, since all inspections are currently done **on the border** as opposed to **in the vicinity of the border**. Geography may not be as convenient as that of the Ambassador Bridge, but multiple inspection stations would facilitate the inspections and provide similar benefits currently experienced at the Ambassador Bridge.

⁹⁹ Remo Mancini, Corporate Vice President, Canadian Transit Company, written testimony submitted to the Senate Interim Committee on NAFTA hearing, San Antonio, Texas, April 15, 1998.

¹⁰⁰ Kristine Burr, Director General-Surface Policy, Transport Canada, testimony before the OECD Conference on Intermodal Transport Networks & Logistics in Mexico City, June 3-5, 1997 (resubmitted with permission to the Senate Interim Committee on NAFTA hearing in Houston, Texas, October 13, 1997).

Laredo, with its three international bridges, is the busiest land port on the U.S.-Mexico border, handling more trade with Mexico than all the inland ports of Arizona, California, and New Mexico combined.¹⁰¹ Currently, 35 percent of all NAFTA ground transportation between the U.S. and Mexico moves through the City of Laredo.¹⁰² And, since trade between Mexico and the U.S. increased from \$76 billion in 1992 to \$156 billion in 1997, this represents huge economic benefits for the region.¹⁰³ Laredo experienced a 25.9 percent increase over 1996 in the number of southbound truck shipments into Mexico in the month of December 1997 alone.¹⁰⁴ For the entire year of 1997, Laredo handled a total of 1,227,000 loaded trucks, 246,000 loaded rail cars (equivalent to another 1,000,000 loaded trucks), and 389 million pounds gross landed weight (g.l.w.) of air cargo.¹⁰⁵ Advocates for Laredo as a key port of entry argue that multimodal access will be vital to the continued success of Laredo.

El Paso's bridge crossings totaled 17 percent of the U.S. total in 1997, followed by the McAllen-Brownsville area with 13 percent. Although these bridge crossings do not handle as much traffic as Laredo, I-69 is expected to significantly boost the Brownsville-McAllen numbers, while the El Camino Real Corridor is expected to boost El Paso's numbers.

Part of the international bridge infrastructure in Texas is the inspection process by the Department of Public Safety. DPS has authority to inspect any commercial truck in Texas, whether crossing into Texas from another U.S. state or at the international border. Some of the things DPS examines are safety equipment, proper insurance and driver certification. These inspections are critical to culling out unsafe trucks from the barrage we experience every day on Texas roads. But, as Major Lester Mills of DPS notes, "very little manpower and resources [are available] to adequately control the traffic."¹⁰⁶ For example, in 1995, DPS only had 15 officers stationed among 5 Texas border cities. DPS asserts that one result of inadequate enforcement has been that Texas has earned the dubious reputation of having the greatest number of fatal commercial vehicle accidents in the United States.¹⁰⁷ However, it is important to note that trucks and buses with Mexican license plates involved in all crashes in Texas in 1995 and 1996 accounted for less than one percent of total crashes in those years. Further, four major border counties posted an increase of only seven fatal crashes from 1995 to 1996, compared to 87 in

¹⁰¹ Fatemi, supra note 14.

¹⁰² Texas A&M International University Institute for International Trade and Texas Center for Border Economic and Enterprise Development, "Border Business Indicators," Vol. 22, No. 2, February/March, 1998 at 1.

¹⁰³ "Laredo's Transportation System and the Port of Laredo in the Year 2000," Laredo Development Foundation testimony presented to the Senate Interim Committee on NAFTA, in Corpus Christi, Texas, February 10, 1998.

¹⁰⁴ Fatemi, supra note 14.

¹⁰⁵ Laredo Development Foundation, supra note 103.

¹⁰⁶ Major Lester Mills, Texas Department of Public Safety, testimony presented before the Senate Interim Committee on NAFTA hearing, Houston, Texas, October 13, 1997.

¹⁰⁷ Id.

the rest of the state's counties.¹⁰⁸

The Legislature has been hesitant to appropriate as much funding as DPS has requested to staff the border inspection points. Consequently, less than one-half of one percent (0.5%) of all trucks crossing the Texas-Mexico border are inspected. The Legislature appropriated funding for an additional 38 officers over the next fiscal biennium (1998-1999). However, even if truck inspection points were adequately staffed along the border, there would still be the issue of inadequate staffing of federal inspections by agencies such as U.S. Customs and the Drug Enforcement Agency.

Less than one-half of one percent of all trucks crossing the Texas-Mexico border are inspected.

Finally, there should be some formal understanding or agreement between state border enforcement agencies like DPS and federal inspection agencies to allow side-by-side inspections. Currently, Customs officials are not required to allow DPS to conduct their inspections alongside Customs officers, but unofficially allow it for the time being. If

Customs officials were to stop this unofficial practice, it would hinder truck crossings that much more by having to go through one more inspection before being on their way.

Ports

Texas has 13 maritime ports, including Houston, Orange, Corpus Christi, Port Arthur, Texas City, Beaumont, Freeport, Galveston, Port Lavaca, Brownsville, Matagorda, Port Mansfield, and Harlingen. Among these, Houston is the largest. In 1996, the Port of Houston handled 21.6 million tons valued at \$3.1 billion in international shipments to and from Mexico.¹⁰⁹ The first ten months of 1997 posted similar numbers at the Port.

According to testimony presented to the NAFTA Committee, the primary issue surrounding ports is their capacity for intermodal transfers. Despite TxDOT's continued reassurances that it is expanding intermodal programs within the agency, TxDOT does not directly fund any port operations because port facilities are largely private. Nevertheless, ports like Houston are upgrading their own infrastructure to prepare for the continued influx of trade under NAFTA, with limited TxDOT funding for roads leading into and out of the Port. For example, the Port of Houston has expanded its rail ramp point at Barbours Cut, building ten miles of lead track to allow intermodal traffic easier access. As noted in the next section on rail, these improvements have languished only because of the Union Pacific rail merger that has tied up rail lines and stock yards for almost a year in the Houston area, including the Port of Houston.

Another Texas port, the Port of Corpus Christi, ranks 6th in the nation in overall tonnage of imports and

¹⁰⁸ Id.

¹⁰⁹ Greater Houston Partnership, "Mexico, Texas and Houston: Access Mexico 98- Trade and Investment Conference," Spring 1998 (p. 6).

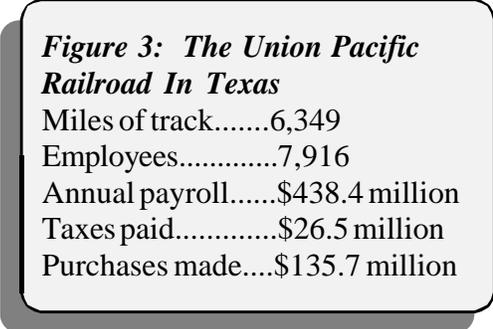
exports, and is also designated a strategic military seaport.¹¹⁰ Corpus Christi's port also ranked second in the nation in petroleum and petroleum product imports/exports in 1996. 1997 tonnage figures for the Port of Corpus Christi confirm that it does a brisk business-- 83,000,000 total tons valued at \$14 billion-- with crude oil as the top commodity (over 33 million tons). Corpus Christi, like Houston, has been improving its intermodal access to better accommodate NAFTA trade. Additionally, as one of the port cities that will lie on the future I-69 route, Corpus Christi has pursued I-69 designation alongside Houston, especially with its central location and easy access to I-35 via I-37, which terminates in downtown Corpus Christi.

Texas Railroad Crisis and Texas Rail Policy

Texas businesses have lost \$1.4 billion to date because of the rail transportation crisis that began early in 1997.¹¹¹ By the fall of 1997, Texas businesses had lost \$762 million in sales, higher shipping rates and scaled back production. Electric bills rose throughout the state due to delays in delivery of out of state coal. For example, the average San Antonio electricity bill rose \$8 in October, 1997.¹¹² Texas businesses have found it difficult or impossible to deliver goods to their customers. They have reported being hampered by slow, unreliable deliveries of supplies and materials. Inadequate rail service is being blamed for Texas businesses losing customers and market share. The rail crisis threatens Texas' economic growth at the very time that Texas is rapidly developing a broad economic base. Texas businesses testified before the NAFTA Committee that they are losing long-term market share to their competitors.¹¹³ For example, Cemex USA, which owns Sunbelt Cement in New Braunfels, has experienced a 50 percent drop in outbound trains since July 1997, and workers have been laid off. The company lost a lucrative contract with the Texas Department of Transportation because it could not deliver limestone on time.¹¹⁴

The crisis is the result of the recent merger and consolidation of the major railroads operating within the state compounded with unanticipated growth in commercial traffic for which the railroads and indeed the entire transportation system was unprepared.

The consequences of the rail crisis go far beyond the railroads and their customers. Large volumes of freight



¹¹⁰ Port of Corpus Christi, "Facts and Statistics," provided to the Senate Interim Committee on NAFTA hearing in Corpus Christi, Texas, February 10, 1998.

¹¹¹ Bernard L. Weinstein and Terry L Clower, The Impact of the Union Pacific Service Disruptions on the Texas Economy: An Interim Report, prepared for the Railroad Commission of Texas (published by the Center for Economic Development and Research at the University of North Texas) November 24, 1997.

¹¹² Id.

¹¹³ The rail crisis was addressed in the interim hearings of several committees. The most extensive testimony occurred at the Senate Economic Development Committee hearing on August 1, 1998 in Austin, Texas.

¹¹⁴ "Merger may have derailed UP," San Antonio Express-News, November 30, 1997. This article is one of the most complete summaries of the rail crisis.

have been diverted from the rails onto the highways. Trucking companies in November of 1997 reported that they are unable to handle the freight traffic that is being diverted from the railroads.¹¹⁵

Highway traffic pressures threaten to displace the traditional constituency of the highways and endanger both private motorists and local freight and delivery carriers. The public outcry raises the possibility that expensive highway investment decisions may be made in response to temporary traffic situations created by the rail crisis. The lack of a comprehensive, multi modal, statewide transportation plan increases the probability of confusion and misplaced investments.

Total Texas export trade increased from \$50 billion in 1992 to over \$84 billion in 1997, a 68 percent increase.¹¹⁶ Trade means transportation and the nearly 70 percent increase in trade is mirrored by an equal growth in demands on Texas transportation infrastructure. At the same time, Texas' gross domestic product grew from \$405.1 billion in 1990 to \$521.2 billion in 1997, an increase of over \$15.6 billion.¹¹⁷ At the same time, the national growth of international trade has made Texas a conduit for 80 percent of U.S. trade with Mexico.

The 1996 merger of the Union Pacific (UP) Railroad Corporation with the Southern Pacific (SP) was preceded in 1995 by the merger of the Burlington Northern with the Santa Fe (BNSF). These mergers left Texas with only two major carriers. In particular, the UP - SP merger was fraught with difficulty. When management mistakes collided with increased demand for freight service, overall rail service deteriorated dramatically. Furthermore, in major shipping markets Texas shippers which had previously benefitted from some degree of competition among railroads were forced to rely on monopoly carriers.¹¹⁸

Testimony before the NAFTA Committee indicated that the petrochemical industries along the Gulf Coast, shippers of rock, aggregate and cement, lumber mills, and grain producers were among the hardest hit. The petrochemical industry in particular is almost exclusively dependent on rail to move chemicals between steps in production. For example, the giant Dow Chemical Company complex at Freeport uses 60 miles of Union Pacific track within the facility to move and store chemicals among the 80 production facilities inside the complex. Train derailments in the Dow complex since the Union Pacific merger are double the rate prior to the merger.¹¹⁹

Shippers in the Houston/Gulf Coast area have been particularly active in attempting to resolve the

¹¹⁵ Sharon Simonson, "Truckers pick up railroads business; Influx of extra cargo swamps companies" El Paso Times, November 13, 1997 at 1A.

¹¹⁶ Texas Department of Economic Development, Business Development Division, Economic Information Clearinghouse, Highlights of 1997 Texas Exports: Trends, Statistics, Analysis, Austin, Texas, 1998, Table 1.1 at 1, 2.

¹¹⁷ Texas Comptroller of Public Accounts, "Economic Forecasts, Fall 1997," <http://www.cpa.state.tx.us/ecodata/fcst9731.html>

¹¹⁸ San Antonio Express-News, *supra* at note 114.

¹¹⁹ "Train derailments increase at Dow Chemical", Associated Press, *Austin American Statesman*, August 3, 1998, p. B3.

bottlenecks. On July 8, 1998, they filed with the federal Surface Transportation Board a “consensus plan,” developed in conjunction with Union Pacific and Burlington Northern Santa Fe. The primary concerns of the shippers are reliability, safety, and cost. Since the Gulf Coast contains so many tracks connecting facilities that are highly dependent on rail, the shippers are asking for “neutral switching,” a system in which all carriers would have access to all the tracks in a particular region, without prejudice.¹²⁰ At this writing, the Surface Transportation Board has not acted on the plan.

A Texas Rail Policy

Texas has had an ambivalent relationship with railroads throughout its history. On one hand, railroads were so important to the development of Texas that the Legislature gave railroad companies almost one fifth of the entire State, some 50,240 square miles or 32,153,878 acres as well as 200 feet of right-of-way and construction materials.¹²¹ On the other hand, Texas suffered from the abuses of railroad monopolies during the late 19th Century, and led the way in regulating railroads on both the national and the state level.¹²²

Texans adopted the first Texas Rail Policy by ratifying Article 10, Section 2 of the Texas Constitution which states:

PUBLIC HIGHWAYS; COMMON CARRIERS; REGULATION OF TARIFFS,
CORRECTION OF ABUSES, AND PREVENTION OF DISCRIMINATION AND
EXTORTION; MEANS AND AGENCIES

Railroads heretofore constructed or which may hereafter be constructed in this state are hereby declared public highways, and railroad companies, common carriers. The Legislature shall pass laws to regulate railroad, freight and passenger tariffs, to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this state, and enforce the same by adequate penalties; and to the further accomplishment of these objects and purposes, may provide and establish all requisite means and agencies invested with such powers as may be deemed adequate and advisable. (Amended Nov. 4, 1890.)

Article 10 reflects the importance of the railroads to Texas as well as the hard lessons the State and her people had learned at the hands of unregulated monopolies. The Constitution’s approach is strictly regulatory, a practice which collapsed under its own weight in the 1960s. At the same time, the federal

¹²⁰ Finance Docket No. 32760 (Sub-No.26), “Request for Adoption of a consensus plan in order to resolve service and competitive problems in the Houston/Gulf Coast area.” submitted to the Surface Transportation Board, July 8, 1998.

¹²¹ J. T. Robison, Texas Land Commissioner, report to the Legislature, October 19, 1916. Examples include: General Laws of the State of Texas, 1869, Chapters 26, 36, 41, 45, 54, 58, 124, 272; Special Laws of the State of Texas made 28 grants of land to railroads in Chapters 95, 108, 112, 120, 144, 159, and 205. Chapter 51, General Laws of the State of Texas, 1876 consolidated and standardized the State’s railroad grants.

¹²² S.G. Reed, A History of the Texas Railroads and of Transportation Conditions under Spain and Mexico and the Republic and the State, The St. Clair Publishing Co. (1941). Long out of print, this is the only comprehensive history of Texas railroads.

government has preempted the authority of the states to regulate railroads through such legislation as the *Stagger's Act of 1980*. The recommendations that follow rely on competition instead of regulation, and are strategies which are available to the state despite federal preemption of regulation.

The reader is reminded that although the Texas Constitution makes railroad companies *common carriers*, the Texas Transportation Code 5.004, which addresses the duty of a common carrier to receive and carry goods, specifically exempts railroads from any obligation.

The Rail Policy Task Force appointed by the Railroad Commission of Texas has not completed its work at the time this report went to print. In lieu of the task force's report, the staff of the NAFTA Committee recommends that the Legislature should consider that the first objective of legislation to address rail issues should be to ensure that the growth of the Texas economy is not hampered by poor rail transportation, and to ensure that Texas businesses are not subjected to anti-competitive practices or unfair shipping costs that hamper their ability to compete in the free market. The second objective is to ensure that Texas motorists will continue to have safe, convenient highways and to preserve the highways for appropriate users, by ensuring that railroads carry the maximum amount of freight so that the highways are used for passenger cars, local freight delivery, time-sensitive freight delivery, and delivery to markets not served by rail. The Committee recommends that the Legislature can do this by adopting a Texas Rail Policy to ensure that the majority of Texas industry has access to a competitive railroad market as required by Article 10, Section 2, Texas Constitution.

In order to implement a rail policy effectively, the Railroad Commission of Texas should be given the authority and mandate to use all practical means to increase competition among rail carriers operating in Texas, and to represent Texas in all future decisions by the STB that will affect rail cost and service in Texas.

Although the federal government has preempted most state regulation of the railroads,¹²³ the state retains the power to use market forces and competition to improve rail service. For example, the Rural Rail Districts are available to be the local sponsors of rail projects which will provide competition in appropriate freight markets. Furthermore, the State- through either the Rural Rail Districts, TxDOT or the Railroad Commission- could finance construction of rail facilities on a cost-recovery basis when doing so will introduce competition and improve efficiency on high-volume routes. Alternatively, the Legislature might consider authorizing TRRC to subsidize certain routes where doing so would serve the public interest.

The Legislature has a number of funding options if it wishes to expand its options beyond cost-recovery financing of competitive projects. It could create a rail infrastructure construction fund or a competition enhancement fund consisting of revenues from a small licensing fee per rail car per shipment that originates or ends within the State of Texas, or revenues from abolishing the exemption to the diesel fuel tax for railroads. Tax Code §153.201 (a) imposes a tax on the first sale or use of diesel fuel in this state. Diesel fuel sold or delivered into the fuel tanks of a railroad locomotive is exempted under §153.203, Tax Code, while § 153.222 allows refunds of taxes paid on excepted uses of diesel fuel. The Comptroller estimates that repeal of the exemption would generate \$42 million in fiscal 2000 and \$53

¹²³ Charles Matthews, TRRC Chairman, testimony before the Senate Economic Development Committee, August 4, 1998.

million in fiscal 2001.¹²⁴

Finally, in order to provide information on which to base future rail policy, the Legislature should require railroads operating totally or partly within the State of Texas to report on the origin and destination of shipments which originate or terminate within the state. Such a requirement would be similar to Senate Bill 566 passed in the 75th Legislature (Truan) which directed TxDOT to conduct a route and destination study for motor carriers.

Table 2: Rail Advisory Committee Members

Industry (12)

1. Tommy Engleke Texas Agricultural Cooperative Council
- 2.. Ron Dipprey Dow Chemical
3. Tony Bennett Temple Inland
4. Stephanie Newell Houston Industries
5. Mike Spahis Fina
6. David Swinford - CHAIR -Dumas, Tx, Grain Elevator Operator
7. Robert Howden NFIB
8. Ron Bird Commercial Metals
9. Cliff Hahne Pioneer Concrete
10. Marc Levine United DC (Plastics)
11. Glenn Jones Texas Farm Bureau
12. Mike Stewart TACA

Local Officials (6)

1. Tom Kornegay, Port of Houston Authority
2. Kerry Cox, Chairman of the Board, Collin County Community College
3. Bob Post, Chairman, South Orient Rural Rail Transportation District
4. Councilman John Wood, City of Brownsville
5. Mayor Elizabeth "Betty" Flores, City of Laredo
6. Joe Z. Ramirez, Interim Rail Development Officer, Capitol Metro

Rail Officials (5)

1. Larry Fields, TexMex Railroad
2. James E. Robinson, General Manager, Georgetown Railroad
3. Paul Broussard
4. Ed Handley, Union Pacific/Southern Pacific Railroad
5. Dennis Kearns, Burlington Northern/Santa Fe Railroad

Ex-Officio

Jerry Martin - Rail Division Director

¹²⁴ Comptroller of Public Accounts, analysis provided July 15, 1998.

Establishing a State Telework Policy

Telework is an arrangement in which an employee works at home or at a location near the home on a full time or part time basis. Telework programs can increase the efficiency of state agencies, provide a better work environment through flexibility, and increase competitiveness with private industry.

Tasks suitable for telework include writing, research, editing, reading, drafting, auditing, customer service, data entry, programming, and bookkeeping.¹²⁵ Only a few tasks are not suitable for telework, such as meetings with peers, customers or other agencies, daily face-to-face contact with the public, answering questions which require extensive research not available at remote workplaces, and tasks that involve technology when that technology is not available.

A statewide telework policy for all state employees would reduce air pollution and NAFTA-related traffic congestion. A “telework” or “telecommuting” policy focuses not on a specific technology, but on such policy matters as supervision, accrual of benefits, timekeeping, worker’s compensation, custody and responsibility for state equipment, attribution of benefits or reimbursement for goods and services provided by the employee as a result of telecommuting. This is important, given technology's ever-increasing and changing role in our society.

Texas has no formal policy either for or against telecommuting, but has already encouraged several state agencies to look at telework as a possible means of saving taxpayer dollars. After the 73rd Texas Legislature passed House Resolution 797, urging all state agencies to investigate and implement telecommuting to save costs to state government, several agencies followed the Legislature’s lead. The Texas Employment Commission, now the Texas Workforce Commission, began its pilot program in 1990 and has steadily expanded it over the past eight years. The Texas Natural Resource Conservation Commission Houston office initiated a pilot program in 1994, and the Austin and Arlington offices followed in 1997. In 1995, the Texas Department of Transportation developed general telework guidelines that are used by several agencies today. These general guidelines have saved agencies many months of research and many hours of developing their own guidelines from the beginning.

To date, at least ten state agencies have implemented telework pilot programs: the Texas Department of Transportation, the General Services Commission, the Comptroller’s Office, Texas Natural Resource Conservation Commission, the Texas Department of Health, the Texas Department of Human Services, the Texas Department of Criminal Justice, the General Land Office, and the Employee Retirement System. All these state agencies report two distinct but important factors: their programs are each very successful, but lack the legislative “support” or mandate that would enable them to expand these programs and thus obtain a wider range of benefits. It is for this reason that this Committee is urging the adoption of a state telework policy.

Several other states have already implemented successful telework policies for their state agencies, including Arizona, California, Connecticut, Hawaii, Massachusetts, Minnesota, Oregon, and

¹²⁵ "Hello, boss. How's the weather?," Texas Comptroller of Public Accounts Fiscal Notes, June 1997.

Washington State.¹²⁶ Telework policies have also been implemented by several federal agencies,¹²⁷ and a few municipalities along NAFTA corridors, such as the cities of Austin and San Antonio.

Nearly two-thirds of Fortune 1000 companies view telecommuting as beneficial to employers and employees, and have already begun to incorporate telecommuting into office routines. Since employees generally prefer telework arrangements, the State is becoming less competitive for employees. The Comptroller reported that by the year 2025, nearly 40 percent of the U.S. workforce - an estimated 50 million people-- will be teleworking.¹²⁸

There are many documented benefits to teleworking.¹²⁹ First, it saves money. A telework program costs little to implement compared to its benefits. The City of San Antonio's telework pilot project reported that there were 83 additional hours of productivity that otherwise would not have been available from the participants.¹³⁰ Allowing teleworkers who have minor contagious ailments to work from home will save the State from paying leave it would otherwise have had to pay. Based on the data from the pilot project at Texas state agencies and the programs implemented in other states, the State of Texas stands to save millions of dollars by reducing the office space for employees who telework. In private industry, AT&T halved its New Jersey office space costs, and IBM eliminated work space for 20,000 workers through telecommuting and shared work-space programs.¹³¹

An additional benefit to the State is the reduction of paid or unpaid leave, for example, maternity leave or Family Medical Leave Act (FMLA)-- new moms/dads can choose to work part-time from home, saving the need to hire temporary replacement employees. This allows the work to still get done while complying with the federal FMLA, which allows employees to take up to twelve (12) weeks' leave a year. The potential cost savings for individual employees is found in their monthly fuel and food costs, which could reach as much as \$40/week.¹³² For example, Comptroller employees who teleworked saved a total of \$1600 in gas and \$2,200 in lunch expenses.¹³³

An additional benefit is environmental; fewer cars on the road translates into fewer emissions. The City

¹²⁶ Due to the volume of materials, please see Appendix E for description of other states' policies.

¹²⁷ Internal Revenue Service; U.S. Department of Transportation, among others.

¹²⁸ Comptroller, supra note 125.

¹²⁹ For a more in-depth discussion of the benefits of telework programs, see "Telecommuting in Texas," by DBR & Associates, Plano, Texas. (214)422-4782. See also www.nbn.com for a list of private companies and public agencies that telework/telecommute.

¹³⁰ "Telecommuting Project Review," City of San Antonio Information Services, November 1992 at 6.

¹³¹ Comptroller, supra note 125.

¹³² For example, 30 miles per day at \$.11/mile for transportation, and 5.00 per day for meals, totals \$41.50/week.

¹³³ Comptroller, supra note 125.

of Austin's final report on its telework pilot found that as a result of their pilot program, "vehicle pollution... dropped by 17 percent."¹³⁴ The benefits of a full-scale program were estimated to be substantial, especially in reducing air emissions that contribute to ozone non-attainment.¹³⁵ This is an important benefit because based on ozone levels of the past three years, Austin, San Antonio, and the Longview-Tyler-Marshall area would not comply with federal Clean Air Act requirements and thus could face mandatory controls costing as much as \$60 billion a year.

As NAFTA continues to increase the overall volume of traffic on Texas highways, Texas must look at commuting alternatives to help meet new federal air quality standards. According to an article in the Comptroller's June 1997 Fiscal Notes, a typical Texas commuter spends 30 minutes each way to work which is the equivalent of six -40-hour weeks per year driving to and from work.¹³⁶ Teleworking could reduce rush-hour trips in major cities by 10 percent, according to a 1993 study by DBR & Associates of Plano.¹³⁷

Remote work sites are another alternative to consider alongside telework programs. Remote work sites are downsized offices located closer to suburban residences and usually available at lower rental rates than downtown spaces. They provide essential office functions such as faxing, copying, etc. The State might begin to look for these remote work sites at locations where regional offices of various agencies already lease or rent space. The primary advantage to using remote work sites as a supplement to telecommuting is lower overhead costs due to less actual required space and cost-sharing with other state agencies for office "basics" like copiers and fax machines-- those things that are least readily available to the teleworker at home. And, as mentioned before, remote work sites would save travel miles and therefore employees would generate less pollution, and fewer dollars spent on gas and car maintenance.

There should be several elements included in any state telework policy. The first should be the policy goal: to promote flexibility while increasing work product. The second should be intent: state agencies must control their own programs to ensure the needed flexibility. Third, the State must designate the home as an alternate work site. Fourth, if any changes are to be made to compensatory time and overtime use in a telework program, those changes must be made by the Legislature. Fifth, it must be understood that there will be no start-up costs. Agencies and employees will use existing equipment and update as new equipment becomes available. No expenditures will be required to implement this policy. Sixth, training should be mandatory for all teleworkers and supervisors, compared to a mere briefing. Finally, the policy should make clear that telework is not a substitute for childcare. Finally, any state telework policy should promote understanding and acceptance through exposure.

Based on the overwhelming evidence, telework is a successful alternative to traditional employment, when applied wisely. Telecommuting will continue with or without governmental facilitation, but with

¹³⁴ City of Austin, Planning, Environment and Conservation Services Department & Watershed Protection Department Telework Pilot, "Final Report," April 1998, p.8.

¹³⁵ Id.

¹³⁶ "Buses and Beyond," Comptroller of Public Accounts' Fiscal Notes, June 1997.

¹³⁷ Comptroller, supra note 125.

state government support, its agencies can expand their existing pilot programs to include numbers that will reap the benefits touted here. Therefore, we urge that the State of Texas consider adopting a telework policy.

NAFTA and the Environment

The natural resources of the Texas-Mexico border are at risk because of fragmented authority. Two nations, eight states, and innumerable local governments compete for access to and jurisdiction over the natural resources of the Rio Grande basin, a region twice the size of the State of California. Consequently, Texans and Texas communities that depend on those resources are at risk because communities along the river do not have any significant participation in management decisions made at the international and interstate levels.

The Rio Grande/Rio Conchos

Basin:

- ➔ 2 nations
- ➔ 8 states
- ➔ 19 Pueblos and Tribes
- ➔ twice the size of California
- ➔ 335,500 square miles

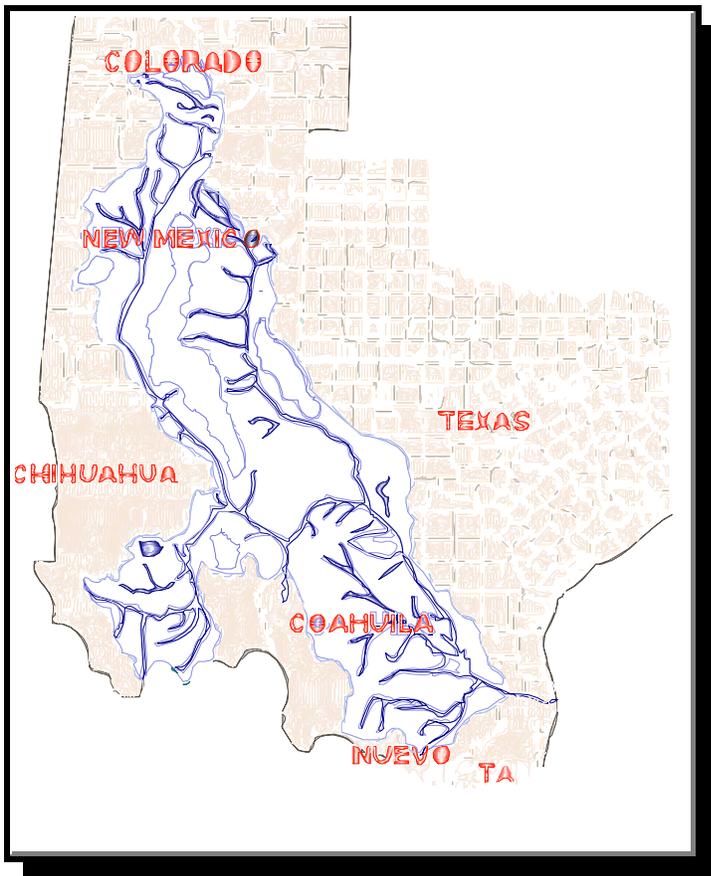


Figure 4: Rio Grande/Rio Conchos (White Map Area)

Little of the water in the Texas segment originates from Texas, and the majority of the river's watershed lies in deserts with less than eight inches of rainfall per year. The Rio Grande is partly managed by the International Boundary Water Commission (IBWC), a binational body whose U.S. component is a division of the State Department. Above El Paso, the river is managed by the Rio Grande Compact Commission. The quantity and quality of the water and other natural resources that Texas receives depend to a large degree on effective management practices upstream.

Texas communities along the Rio Grande suffer the consequences of fragmented authority because Texas has had no management control over the Rio Grande and the state has not developed the data and analyses necessary to tell where Texas' interests lie. Since no river authority controls the river, there is no local center of expertise either. In addition, neither Texas nor Mexico regulates groundwater. Along the Rio

Grande, groundwater is continuous with surface water, and shallow groundwater pumping taps the river, complicating an already difficult water allocation scheme.

Texas agencies and the federal government started working to make management of the Rio Grande more responsive and more coherent by lowering the institutional barriers even before adoption of the NAFTA environmental side agreements. To address the need for binational cooperation, the U.S. Environmental Protection Agency and Mexico implemented the Border XXI program to improve environmental conditions along the border. Border XXI brought together U.S. and Mexican federal entities to cooperate to improve environmental conditions, natural resource management and human health in the region.¹³⁸

Environment Protection:

- **Environmental Protection Agency (EPA)**
- Secretariat for Environment, Natural Resources and Fisheries (SEMARNAP)
- Secretariat for Social Development (SEDESOL)

Natural Resources:

- **Department of the Interior (DOI)**
- **Department of Agriculture (USDA)**
- SEMARNAP

Border Water Resources:

- International Boundary Water Commission (IBWC)
- **DOI**
- **EPA**
- SEMARNAP

Environmental Health:

- **Department of Health and Human Services (HHS)**
- Secretariat of Health (SSA)

(IBWC is joint agency between U.S. and Mexico)

Figure 4: Key Federal Agencies Involved in Border XXI (U.S. agencies are in bold)

On July 30, 1998, President Clinton formally designated the Rio Grande as an American Heritage River, which will give riverside communities a direct liaison with federal agencies in Washington. Beside giving Texas border communities an inside liaison to Washington, the program aims to help develop a community of interest with an effective voice over of the fragmented voices that currently exist.

Combined with regional planning as envisioned in SB 1 (75th), these three initiatives promise to help Texas

In addition to Border XXI, EPA Region 6 funds the Rio Grande Alliance. The Alliance is an international forum that fosters communication between the agencies and the diverse interests within the Rio Grande basin concerned with “the protection, improvement, and conservation of natural resources and human health.”¹³⁹ The Alliance gathers data on water resources, inventories projects, and disseminates information in the U.S. and Mexico. It is the only multinational, multi state, transboundary governmental forum in the Rio Grande Basin.

- ✓ assess our water needs
- ✓ support voluntary local environmental, economic, and cultural initiatives involving the river
- ✓ participate meaningfully in river-related regional activities
- ✓ have bilateral issues affecting the river addressed with due diligence
- ✓ secure protection from abusive enforcement or threats to private property or other constitutionally protected rights

Figure 5: CoRio’s Objectives for Jurisdictional Partnerships

¹³⁸ “Border XXI Program Framework Document: Executive Summary” <http://www.epa.gov/usmexicoborder>

¹³⁹ Mission Statement of the Rio Grande Alliance - <http://www.riogrande.org>.

communities overcome the challenges created by the fragmented stewardship of the river. However, Texas is hampered in its efforts to protect its interests by a lack of independent data and analysis. For example, TNRCC has determined that it is not necessary to develop a water availability model for the Rio Grande since the water is already fully allocated, Texas controls only the state's portion of the river's water, the Rio Grande Watermaster has oversight of the Texas allocation. On the other hand, one might argue that the water availability model for the Rio Grande is another information issue. A water availability model is a system for accounting for all water rights that apply to a particular river and evaluating their interactive effects. TNRCC's position assumes that useful data will not be produced by developing a model. However, a water availability model for the Rio Grande could deal with the complex effects of the Rio Grande Compact and the several treaties that govern allocation between Texas, Mexico, New Mexico, and Colorado. Furthermore, the direct, intimate interaction of groundwater with surface water along the Rio Grande is an incontrovertible fact, but that interaction has not been measured or modeled. Although the surface water of the Rio Grande is fully allocated, groundwater pumping is uncontrolled on both sides of the river. In times of drought it may be impossible to ensure the reliability of the surface water supply without firm understanding of the effects of groundwater usage.

Knowledge is Power: Protecting Texas' Interests

The Legislature could take several steps to protect Texas interests. These include continuing to support interagency, international, and interstate coordination such as the Rio Grande/Rio Bravo Alliance and the American Heritage Rivers Initiative in order to give Texas interests a voice in the management of resources within the Rio Grande Basin. To further this goal, the Legislature should consider directing the Texas Water Development Board and the Texas Natural Resources Conservation Commission to coordinate in developing a complete water supply model for the Rio Grande. Furthermore, the Legislature should also consider creating and funding a position at the Texas Water Development Board for border and international water issues and to develop a water supply model for the Rio Grande including underflow or riparian groundwater in conjunction with TNRCC. In light of the need for a comprehensive understanding of the water supply capacity of the Rio Grande, the Legislature should also consider directing TNRCC to develop a water availability model for the Rio Grande as the agency is doing for all other rivers in the State, and should direct TNRCC to include the firm yield of groundwater in the model.

In 1987, the 70th Legislature created the Advanced Research Program (ARP) and the Advanced Technology Program (ATP) to promote economic diversity within the state by funding research grants to Texas faculty members. The goal of the ARP and ATP was to generate a pool of highly trained specialists in Texas, to develop new technologies, and to support research that strengthens existing Texas industries. The Texas Higher Education Coordinating Board administers the current \$60 million biennial funding for both programs. The statute specifies 24 specific areas of research for funding.

Several measures would maximize the benefits of the state's research resources. The 76th Legislature might consider directing the Texas Higher Education Coordinating Board to fund research on border environmental and natural resource issues from the Advanced Research and Advanced Technology funds. The Legislature could also encourage Texas public colleges and universities to apply existing research resources to help find new, affordable, solutions to the increasing scarcity of water and problems with water quality, including increased salinity and fecal coliform in the Rio Grand.

Senate Bill 1

The 75th Legislature began to address the management problems of the Rio Grande in the omnibus water bill, Senate Bill 1. SB 1 permits local regions to set up local planning committees which will have primary responsibility for developing water plans for their regions.

Additionally, SB 1 grants Texas entities the authority to invest outside the state in any project that improves the quantity and quality of water available to Texas.¹⁴⁰ This broad authority may be used for a wide variety of projects including improvements to sewage treatment and hazardous waste management in Mexico to purchase of water supply in New Mexico and Colorado. In a river basin twice the size of California, many opportunities exist to improve the quantity and quality of the water available to Texas.

However, it is not clear that the federal tax code will permit the use of tax-exempt bond revenues in Mexico. There are also potential conflicts with Mexican law.¹⁴¹ Until Texas tests the out-of-state investment authority in SB 1, neither the state nor local governments will be able to plan cross-border projects with any degree of confidence. Therefore, it would be wise for the Legislature to authorize the TWDB to initiate an appropriate project in order to discover potential impediments to investment in Mexico, and to report the results to the 77th Legislature.

In conjunction with SB1's emphasis on local planning and local solutions, local units of government may benefit from interlocal agreements with their counterparts in Mexico. Every city on the Texas side of the Rio Grande has a larger sister city immediately across the river. Interlocal agreements within Texas have been effective tools for increasing the efficiency of services and for solving mutual problems. Texas cities would benefit from having the authority to enter into agreements with their Mexican sister cities. SB 1 envisioned the advantages that could accrue to Texas if the wastewater effluent from Mexican cities could be treated properly. To complement the authority provided by SB 1 to engage in projects outside the state's borders which will benefit the State, the Legislature should consider authorizing local units of government to enter into interlocal agreements with local governments in Mexico for projects of mutual benefit. This recommendation is discussed in another section of this report.

Anytime you see a patch of brush in the Valley, you see a birder with binoculars. That is part of our economic base. -- former Texas Secretary of State, Tony Garza

Protecting the Riparian Environment

Finally, the aggressive efforts of federal agencies to stop the flow of contraband and illegal immigrants involve the use of vehicles which cause erosion and otherwise damage sensitive riparian habitats. The hard-won wildlife corridors along the Texas side of the Rio Grande are particularly vulnerable. It may

¹⁴⁰ Tex. Water Code Ann. §15.401; §15.404, Subsection (a); §15.001, Subdivision (6); §15.002, Subsection (b); §17.001, Subdivision (7); §17.278 (Vernon 1998).

¹⁴¹ Interview with Professor Roberto Rosas, Saint Mary's School of Law concerning the Mexican concept of *amparo*, the right of any Mexican citizen to force governments to honor laws or contractual agreements.

be worthwhile for the Legislature to direct the Texas Parks and Wildlife Department to open negotiations with the relevant federal agencies to find ways to reduce the damage.

Water Supply

The Rio Grande is operated under several international treaties and an interstate compact. The last treaty governing water supply was adopted in 1944 when the Rio Grande served the needs of only one million people who had a smaller economy and a simpler way of life. Today more than 10 million people live in this region that is home to three of the fastest growing metropolitan areas in America.¹⁴²

Moreover, the population of the area is predicted to increase more than 60 percent in the next 25 years.¹⁴³ As the border cities expand and the economy industrializes in this agricultural region, the demands for water and conflicts over water are likely to increase. El Paso and the Rio Grande Valley face water shortages, but for different reasons. The Valley could deal with its current shortages and address future municipal and industrial water needs by reallocating water from agriculture through any number of mechanisms ranging from subsidized irrigation conservation to out-right purchases of irrigation water. Since agriculture uses nearly 90 percent of the water available to Texas in the region below Laredo,¹⁴⁴ conservation of 11 to 12 percent the water currently used for irrigation would double the municipal and industrial supply. This solution is likely to evolve without government intervention since the Rio Grande Valley is the only region of the state with an active water market.

<u>Rank</u>	<u>Metropolitan Area</u>	<u>Percent Increase</u>
1	Las Vegas, Nevada-Arizona	40.9
2	Laredo, Texas	32.7
3	McAllen-Edinburg-Mission	29.2
4	Boise City, Idaho	25.9
5	Naples, Florida	23.7
6	Fayetteville-Springdale-Rogers, Arkansas	23.7
7	Austin-San Marcos, Texas	23.1
8	Phoenix-Mesa, Arizona	22.7
9	Provo-Orem, Utah	21.3
10	Brownsville-Harlingen-San Benito, Texas	21.1

Bold Letters designate areas in the Texas border region

Figure 6: Ten Fastest-Growing Metropolitan Areas (in percentage terms) in the United States (1990-1996).

El Paso’s ability to obtain a larger supply of surface water is limited by institutional barriers. El Paso is expected to need 128,176 acre-feet¹⁴⁵ by the year 2000 increasing to about 214,404 acre-feet by 2050.¹⁴⁶ However, all of the 1,000,000 acre-feet of water produced annually by the Elephant Butte

¹⁴² Steve H. Murdock, Department of Rural Sociology at the Texas Agriculture Experiment Station of Texas A&M University, “The Population of Texas: Historical Patterns and Future Trends Affecting Recreation and Wildlife Management,” (1994).

¹⁴³ Comptroller, *supra* note 29 at 91.

¹⁴⁴ Unpublished data provided by the Rio Grande Watermaster (1996).

¹⁴⁵ One acre foot of water is equivalent to 325,851 gallons of water, the amount need to cover an acre with a foot of water.

¹⁴⁶ Comptroller, *supra* note 29 at 137.

reservoir is dedicated entirely to irrigation under the terms of the Congressional appropriation that authorized the Bureau of Reclamation to build the Rio Grande Project, Elephant Butte.¹⁴⁷

El Paso uses only about 56,000 acre-feet per year from the Rio Grande, which it obtains from the irrigation allocation of land it has purchased within the El Paso Water Supply and Improvement District. The city supplies the remainder of its needs from groundwater which is rapidly declining.¹⁴⁸ The irrigation district receives a total of 275,000 acre-feet per year¹⁴⁹. Juarez is entitled to 60,000 acre-feet, but receives only 50,000 because of problems with its canal. In any event, Juarez relies entirely on groundwater for municipal and industrial purposes. The river water is used for irrigation.

At the same time, agricultural use is expected to decline by 36 percent as the number of area ranches and farms decreases and more efficient methods of irrigation are implemented.¹⁵⁰ More appropriate federal water allocation policies to permit reallocation of agricultural water to municipal and industrial purposes could provide El Paso and Juarez with a generous supply far into the future. Solutions will not reside solely in effective water management in the municipalities but hinge on binational cooperation as well as basin-wide management of the resource.

Drought Update

The drought that has affected the region since 1995 is a further complication for the border's water supply. The economic consequences of the drought are roughly equal to the December 1994 peso devaluation which devastated border retail sales and slowed Texas exports to Mexico.¹⁵¹ A May 1996 study by Texas A&M estimated that total agricultural revenues could fall by as much as \$2.4 billion unless the drought ends.¹⁵² Producer losses at these levels could translate to a decline of about 0.5 percent of the expected 1996 Texas Gross State Product of \$527.2 billion.¹⁵³ Irrigated agriculture in the Rio Grande Valley accounts for more than 80 percent of the total cash receipts for agriculture in the Valley, averaging \$460 million a year for the last five years.¹⁵⁴ The drought in 1998 alone has cost the border region roughly \$100 million in losses to its cotton, grain sorghum, sugar cane, and corn crops.¹⁵⁵

¹⁴⁷ Jack Hammond, Texas Rio Grande Compact Commissioner, interview, April 29, 1996.

¹⁴⁸ Ernest C. Rebock, El Paso Water Utilities, May 7, 1996.

¹⁴⁹ IBWC Bulletin No. 63, p. 10. Actual amounts vary according to complex calculations by the Rio Grande Compact Commission.

¹⁵⁰ Comptroller, supra note 29 at 137.

¹⁵¹ John Sharp, Comptroller of Public Accounts, "Texas and the 1996 Drought: A Special Economic Report," June 1996.

¹⁵² Id.

¹⁵³ Id.

¹⁵⁴ John Sharp, Comptroller of Public Accounts, "Lower Rio Grande Economic Profile," July, 1997 at 1.

¹⁵⁵ "Valley's drought losses may reach \$97 million," Austin American-Statesman, June 5, 1998.

Agricultural production traditionally generates about \$500 million in the Valley, but projections suggest that the region will only see \$360 million this year.

Water Quality

Texas is the terminus of the Rio Grande/Rio Conchos Basin, and must deal with the waste accumulated in the water during its 1,254 mile journey to the Gulf of Mexico. Unprepared for NAFTA-related growth, the border lacks adequate wastewater facilities, water treatment plants, sewage systems, and municipal water systems. [See Table 3, “Sanitation in the Rio Bravo Basin.”] Pollution of the Rio Grande is a serious threat to the safety and security of residents in the border region. Fifteen Texas border communities had ten or more violations for unacceptable bacterial contamination in their drinking water between 1979 and 1995, and nine systems had from three to ten. Bacterial levels in the stretch of river downstream from El Paso-Juarez are so high that it is perpetually unsafe for swimming.

According to the TNRCC, routine monitoring of the river does not occur at a frequency or in enough locations to ensure that surface waters are safe enough to swim in.¹⁵⁶ Only the waters of the Amistad and Falcon reservoirs are considered safe enough for swimming. The two sections from El Paso to Presidio and the tidal reach below Brownsville are safe for contact with skin, but not for swimming. The remainder of the river is not considered safe for any contact with human skin.¹⁵⁷

Table 3: EPA Table A: Sanitation in the Rio Bravo Basin¹⁵⁸

Location	Discharge in million gallons per day (Mgd)	% Population with potable drinking water	% Populations with sewer services**	Facility Planning Stage
Matamoros*	24	85	70	-----
Rio Bravo	2.7	95	65	-----
Reynosa	16	98	74	Planning initiated
Nuevo Laredo	22.7	87	79	Facility Completed
Piedras Negras	5.7	82	60	Planning initiated
Ciudad Acuna	4	92	50	Planning initiated
Ojinaga	1.7	94	80	Planning initiated
Juarez	75	90	84	Planning initiated
*Matamoros’ discharge goes into the Laguna Barril rather than the Rio Grande			**does not refer to <u>treated</u> wastewater	

¹⁵⁶ Comptroller, *supra* note 29 at 125.

¹⁵⁷ “U.S. - Mexico Border Water Quality Issues,” Preliminary EPA Region 6 map, March 12, 1996.

¹⁵⁸ EPA - Region 6, draft, “Watershed based analysis of infrastructure needs US/Mexico Border, 1996, table A.”

Some of the highest levels of fecal coliform contamination have been recorded in the segment downstream of International Amistad Reservoir, in the reach of Laredo/Nuevo Laredo.¹⁵⁹ Average fecal coliform concentrations measured at stations upstream (66 colonies/100 ml) and downstream (10,714 colonies/100ml) of Laredo have shown a 160-fold difference and suggested significant contamination between the two points.¹⁶⁰ On April 17, 1996, a new wastewater treatment system was constructed to address this contamination. The new system treats 90 percent of the city's sewage that in the past had accounted for 23 million gallons of untreated sewage flowing into the Rio Grande every day. The wastewater system was a \$50 million cooperative project by the U.S., Mexico, and Texas, with all parties contributing to the financing. The Mexican government paid 2/3, the Texas Legislature appropriated \$2 million, and the U.S. government paid the balance.

Despite the completion of the Nuevo Laredo treatment system, 105 million gallons of untreated sewage continue to enter the Rio Grande every day from the remaining cities of the border, five times the volume of Nuevo Laredo's former discharge. Juarez, a city of 1.2 million residents, has never had a public sewer treatment plant and accounts for 71 percent of the untreated sewage discharged into the river. The Border Environment Cooperation Commission (BECC) has approved the construction of two wastewater treatment plants for the city at the cost of \$31 million.

Currently, the Juarez wastewater collection systems carry the waste to a series of canals known as the *aguas negras*, or black waters, that drain into an open ditch that runs parallel to the Rio Grande. In theory, authorities bar farmers from using sewage to irrigate crops for human consumption. However, the practice still persists.¹⁶¹ The water is mixed with groundwater during the growing season to irrigate fields 30 miles south of Juarez.¹⁶² During the winter, when the fields do not need irrigation, the water commission has recorded that 39 million gallons of untreated raw sewage enter into the river daily.¹⁶³

Additional evidence of the magnitude of the problem came from the "Binational Study Regarding the Presence of Toxic Substances in the Rio Grande/Rio Bravo and its Tributaries along the Boundary Portion between the United States and Mexico." This study was conducted by TNRCC, the U.S. EPA, the Texas Parks and Wildlife Department, the Texas Department of Health, the Comisión Nacional de Aguas, the Secretaría de Desarrollo Social, and the International Boundary and Water Commission.¹⁶⁴ Toxicity levels exceeded the screening criteria in all of the 45 sites tested. In the tests of fish, 92 percent

¹⁵⁹ "1994 Regional Assessment of Water Quality in the Rio Grand Basin" Clean Rivers Program of the Texas Natural Resource Conservation Commission (TNRCC), 1994 at 3.

¹⁶⁰ Id. at 4.

¹⁶¹ "NAFTA has failed to halt Rio Grande pollution problems," Dallas Morning News, June 9, 1997 at 10.

¹⁶² Comptroller, supra note 29 at 125.

¹⁶³ Dallas Morning News, supra note 161 at 10.

¹⁶⁴ International Boundary and Water Commission, El Paso, Binational Study Regarding the Presence of Toxic Substances in the Rio Grande/Rio Bravo and its Tributaries along the Boundary Portion between the United States and Mexico (1994).

of the samples exceeded the criteria. These results were obtained despite the fact that the samples were one-day “snap-shots” which do not have the sensitivity of long-term monitoring.¹⁶⁵ Furthermore from 1969 to the present, the Rio Grande and its tributaries have had an increasing level of salinity in the water.¹⁶⁶ As salinity increases, the quantity of water that can be used for drinking or irrigation decreases. Controlling salinity is very difficult and costly. A standard method of controlling salinity is to introduce more fresh water into the supply, but this method is not a viable option since the Rio Grande serves as the main source of water for the region. Additional methods include the construction of desalination plants, but this method is quite expensive.¹⁶⁷

In order to address the need for an adequate environmental infrastructure in the border region, the Border Funding Agreement established the North American Development Bank (NADBank) to provide funding for environmental projects and the Border Environmental Cooperation Commission (BECC) which submits project proposals to the NADBank for approval and allocation of funds. The BECC is composed of a Board of Directors and a Public Advisory Committee, both of which have Texas representatives. As of March 1998, NADBank has approved more than \$470 million in loans for more than 20 projects benefitting almost eight million people throughout Mexico and the border states in the US.¹⁶⁸ Table 4 illustrates the wide range of projects approved by NADBank to address border environmental concerns. Various studies have estimated that in the water supply, wastewater treatment and municipal solid waste areas alone, \$6-8 billion in investment in environmental infrastructure is necessary in the border region in order to preserve and protect the health and welfare of its citizens.¹⁶⁹

One of the most productive uses of SB 1 authority to invest in projects that will improve the quality and quantity of water available to Texas is cooperative construction of wastewater treatment plants in Mexico. The TWDB should promptly initiate a pilot project to test the practicality of that SB 1 authority.

¹⁶⁵ Texas Center for Policy Studies, The 1994 Rio Grande Toxics Study: An Evaluation and User's Guide at 3 (1995).

¹⁶⁶ S. Miyamoto, L.B. Fenn, D. Swietlik, Texas A&M University, “TR169 Flow, Salts, and Trace Elements in the Rio Grande: A Report,” <http://twri.tamu.edu/reports/1995/169>.

¹⁶⁷ Comptroller, supra note 29 at 125.

¹⁶⁸ Id.

¹⁶⁹ “Overview of NADBank: Border Region,” http://www.nadbank.org/English/About_Bank/

TABLE 4: Summary of North American Development Bank Projects and Loan Activity through March 1998 (Bold Indicates Projects in Texas)

Location	Project	Total Cost	Approval	Residents to Benefit
Agua Prieta, Sonora Mexico	construction of solid waste landfill	\$2.0 million	Nov-96	80,000
Alton, Texas	wastewater collection and treatment project	\$14.8 million	Jun-97	6,000
Brawley, California	water treatment improvement	\$24.8 million	Sep-95	26,000
Juarez, Chihuahua, Mexico	construction of two wastewater treatment plants and improvement of collectors	\$31.1 million	Sep-97	1,150,000
Del Rio, Texas	water treatment plants and improvements	\$40.2 million	Mar-98	42,000
Douglas, Arizona	upgrade of water and sewer systems	\$2.0 million	Jan-96	14,000
El Paso, Texas	expansion of wastewater treatment facility with a water reuse system	\$11.7 million	Nov-95	90,000
El Paso, Texas	Jonathan Rogers Water Treatment Plant expansion	\$37.8 million	Dec-97	668,000
El Paso, Texas	wastewater treatment self-help loan project for the colonias of El Paso County	\$155,000	Jul-96	900
Ensenada, Baja California, Mexico	rehabilitation of existing system and construction of new wastewater treatment facility	\$8.1 million	Sep-95	250,000
Matamoros, Tamaulipas,	sanitary sewage plant	\$1.1 million	Jan-96	23,000
Mercedes, Texas	expansion of water supply, wastewater collection, and treatment system	\$4.1 million	Nov-96	14,000
Mexicali, Baja California, Mexico	sanitation system expansion and construction	\$50.3 million	Dec-97	601,000
Naco, Sonora, Mexico	water supply expansion and sewage plant improvements	\$1 million	Apr-96	6,000
Nogales, Sonora, Mexico	construction of new aqueduct, regulating tanks, and waterlines	\$39 million	Jan-96	215,000
Puerto Penasco, Sonora,	construction of a new solid waste landfill	\$2.2million	Nov-96	32,000
Reynosa, Tamaulipas, Mexico	rehabilitation and construction of sanitation system	\$80 million	Mar-98	420,000
San Diego, California	expansion of South Bay Reclamation Plant	\$99.3 million	Jun-97	1,900,000
Somerton, Arizona	construction of wastewater treatment plant	\$2.7 million	Nov-96	7,000
Tijuana, Baja California, Mexico	San Antonio de Los Buenos Sewage Treatment Plant improvements	\$18.1 million	Jun-97	1,100,000
Tijuana, Baja California,	expansion of wastewater treatment plant	\$177,000	Jun-97	990,000

Air Quality

Many of the programs created by the TNRCC are driven by federal regulations such as the Federal Clean Air Act, the National Ambient Air Quality Standards, and regulations of the U.S. Environmental Protection Agency (EPA). Because of the joint nature of air pollution problems along the Texas/Mexico border, many problems are international in scope and require binational commitment.

El Paso and Ciudad Juarez form a metropolitan area with the population of Houston in a high desert basin that is subject to air inversions in which a layer of cold air blankets a layer of warm air, trapping pollution near the ground. This entrapment lays the foundation for the air pollution that plagues the region.

Since the 1970's, both cities have experienced tremendous industrial growth that has resulted in increased air pollution. By 1990, El Paso and the State of Texas had instituted programs to reduce the major sources of air pollution on the Texas side of the border, including automobile emissions and the emissions of the ASARCO copper smelter. Despite these measures, El Paso remains an air quality noncompliance area under the U.S. Clean Air Act standards. A lack of data on Juarez emissions has made it difficult to quantify how much Juarez contributes to this problem, but the obvious culprits include brick kilns fired with used tires and other wastes, backyard kilns making asbestos brake linings, unpaved roads, open dumping, quarries, automobile painting, and rebuilding shops.

On May 7, 1996, the U.S. and Mexico signed a joint agreement amending Annex V of the La Paz Agreement for binational management of the El Paso/Juarez air basin. The agreement includes El Paso County, parts of Doña Ana County, New Mexico, and the metropolitan area of Ciudad Juarez that are within 100 kilometers (62 miles) of the border. Annex V and commitments made under the Integrated Border Environmental Plan (IBEP) provide a legal mechanism for Mexico and the United States to conduct joint air studies and to develop emissions inventories in El Paso/Juarez.

One unusual aspect of the agreement is that it sets up strong local input into the binational regulation of air pollution. It established a "Joint Advisory Committee for the improvement of Air Quality" to advise the Air Work Group established under the La Paz Agreement. The Committee consists of 20 members, half of which are from the United States. Two of the American representatives are local government officials from Texas and New Mexico, five are public citizens from the area, and the remaining two were appointed by the federal government and the state governments of Texas and New Mexico.

The Mexican contingent consists of one representative from the city government of Juarez, one from the health authority of Ciudad Juarez, and five public citizens from the area. The remaining three members are from SEMARNAP, the Mexican environmental agency, one from the federal health agency (SSA), and one from the environmental agency for the State of Chihuahua.

The U.S. Environmental Protection Agency is currently considering the development of integrated strategies to implement potential new ozone and particulate matter standards, and new rules for a regional haze program, under new proposed federal standards known as the integrated National Ambient Air Quality Standards (NAAQS). These new standards may pose significant costs for regulated areas and industries, but it may also address complex and persistent air quality problems in border areas such as El Paso. In addition, the binational Air Workgroup will support the development of a subgroup on border vehicle congestion to review ongoing efforts and make recommendations on innovative ways to reduce air pollution attributable to congestion at border crossings. This body will make recommendations to the workgroup in December 1998.¹⁷⁰

¹⁷⁰ Further information on EPA-CICA border air programs is available at <http://www.epa.gov/ttn/catc/cica/>.

A striking example of the effects of Mexican pollution on Texas is found at the Big Bend National Park. On a clear day, in the past, visitors could see almost limitlessly across the majestic landscape. But in recent years, sulfur dioxide emissions from Mexico have cut visibility from the normal 150 miles to less than 50 miles in the summer, and as little as nine miles on some days.¹⁷¹ Big Bend is Texas' second largest tourist attraction, and the state's most important eco-tourism area attracting more than 330,000 visitors per year.

The sources for the pollution were identified in a joint study by the U.S. National Park Service and the Mexican government released in May 1998 as coal-fired electricity plants and other industrial sources in both Texas and Mexico.¹⁷² The largest sources of these emissions are the Carbon I and II coal-burning power plants near Piedras Negras. Both power plants use low grade coal, but Carbon I lacks the equipment to remove particulate, and neither plant is equipped to remove sulfur dioxide.

Carbon I and II are especially disturbing examples of the complex problems of cross-border air pollution. The power plants have been easily identified as point sources for the pollution, and unlike the multiple sources that cause the air pollution in El Paso and Juarez, should be relatively easy to remedy. The cooperation and agreements between El Paso and Juarez against air pollution indicate clearly that government initiatives can be successful, but in the case of Carbon I and II, the failure to address the problem is acutely painful.

Hazardous and Solid Waste

A serious threat to the water supplies and health of border residents is the improper disposal of hazardous and solid waste. Industrialization along the border creates particular concerns about the custody, nature, quantities, and proper disposal of hazardous waste. A major issue since the implementation of the La Paz Agreement is the location of permitted disposal facilities. According to the terms of the agreement, neither the U.S. nor Mexico can construct a hazardous or radioactive waste disposal facility within 100 kilometers (62 miles) of the border

- *U.S. hazardous waste manifests* - Preliminary copies of manifest are received monthly from U.S. Customs ports along the U.S.-Mexico border. Final copies of the manifests are received monthly from state agencies in EPA Regions 6 and 9.
- *U.S. TSD facility notifications of intent to receive hazardous waste* - Notifications are received monthly from state agencies in EPA Regions 6 and 9.
- *Mexican guia ecologicas* - For generators located in Mexican border states, Guia Ecologicas are entered into Haztracks by SEMARNAP subdivisions located in these states. For generators in the interior states, INE performs the task. The U.S. and INE exchange Haztracks on a monthly basis.
(Source EPA)

Figure 7: Documents used by Haztracks to monitor the exchange of hazardous waste between the U.S. and Mexico.

¹⁷¹ National Park Service, State of the Park Report: Big Bend National Park, Rio Grande Wild and Scenic River, January, 1996.

¹⁷² Comptroller, supra note 29 at 129.

without binational consultation.¹⁷³ The location of a proposed Low-Level Radioactive Waste Disposal Facility at Sierra Blanca, a small town 16 miles from the border, has caused tension between Texas and Mexican officials from border communities. Mexican officials have protested the site vehemently arguing that the location of the facility so near to the border directly violates the La Paz accord. The site at Sierra Blanca, if constructed, will house low-level radioactive waste from nuclear plants, hospitals, and research institutes in Texas, Vermont, and Maine.¹⁷⁴ Opponents of the facility point out that since no other state has proceeded to construct a facility, the Texas site is likely to become the defacto dumping ground for the nation.

The issue threatens to undermine binational cooperation between the two governments. Texas' failure to honor the objections of Mexican border communities has cost Texas the high ground in negotiating with Mexico on waste management issues. As a Mexican Senator noted during these disputes, "Is there any sense in entering any international agreements if they are going to be violated?"¹⁷⁵ The final decision will rest in the hands of the TNRCC who will decide to grant the facility a license or not.

Hazardous waste contaminates the Rio Grande River and local aquifers and enters the shared air as dust and fugitive emissions while solid waste washes into the river and the Gulf of Mexico to contaminate the tourist beaches as far north as Mustang Island. More than 160 illegal dumps have been identified in Texas counties adjacent to the river since 1981.¹⁷⁶

The maquiladoras use large quantities of hazardous materials including solvents, acids, reagents, paints, and resins. These raw materials become hazardous waste during industrial processing. The amount of waste produced in any particular process can be predicted from standard industrial practice, and this prediction is a standard item included in industrial planning and auditing.

Article 55 of Mexican Environmental General Law requires that hazardous waste generated by maquiladora industries using duty-free "in bond" raw materials, must be transported back to the country of origin for disposal. Additionally, further agreements, or *annexes*, to the La Paz agreement in 1983 provided specific actions, policies, and responsibilities for various areas of environmental concern. Annex III dealt with the regulation of transboundary shipments of hazardous wastes and substances. Annex III sought to ensure that the transboundary shipments of hazardous wastes and substances between the U.S. and Mexico were conducted in such a manner as to "reduce or prevent the risks to public health, property and environmental quality." It should be noted that Annex III was not a hazardous waste trade ban; merely a regulatory agreement with the following provisions:

¹⁷³ La Paz Agreement, Annex V, formally the Agreement Between the Government of the United States of America and the Government of the United Mexican States on Border Cooperation for the Protection and Improvement of the Environment in the Border Area, 1983.

¹⁷⁴ Brad Prendergast, "Mexico denounces waste site near border," [Austin American-Statesman](#), June 18, 1998.

¹⁷⁵ Gary Scharrer, "Mexican lawmakers to fight waste dump," [El Paso Times](#), June 18, 1998.

¹⁷⁶ Unpublished data provided by TNRCC.

- The Parties agreed to definitions of both hazardous wastes and substances based on their own domestic laws.
- The United States and Mexico state that they will seek to enforce their national environmental laws "to the extent practicable."
- Both signatories agreed that an exporting nation must notify the importing country in writing of any shipments of hazardous waste across national borders.
- The importing country has the right to refuse entry of any shipment of waste it feels is environmentally harmful.
- The written notification must contain information about the contents and quantity of waste, the point of entry, the means of transport, and a description of the treatment and storage of the waste.
- The exporting country must readmit any shipment of waste for any reason.

In addition to these regulatory provisions, Annex III also provides a mechanism for the parties to exchange information and provide "mutual assistance" in the enforcement of environmental laws in the border region.¹⁷⁷

In 1993, Mexico's Secretariat of Commerce and Industrial Development (SECOFI) noted that as little as 30 percent of the maquiladoras' waste actually returned to the country of origin.¹⁷⁸ Additional estimates by the World Bank suggest that as much as 80 percent of the hazardous waste is not repatriated, but remains stored on-site or is otherwise illegally disposed of in Mexico.¹⁷⁹ In Texas, only 1,800 tons of hazardous waste from Mexico were treated in commercial waste disposal facilities, although it is estimated that the actual waste that should have been returned may have been four times that amount.¹⁸⁰ The apparent discrepancies between the amount of waste that should be returned and the actual amount U.S. facilities treat is a cause for concern.

In response to a need for more successful methods of tracking the movement of hazardous wastes across the U.S./Mexico border, the EPA and the Mexican Environmental Ministry created Haztracks. Haztracks is a binational database that records the shipment of imported and exported wastes between the U.S. and Mexico. The database uses various documents for tracking hazardous waste exchange between the U.S. and Mexico compiling them for easier use.

The desire to find more effective methods of tracking the movement of hazardous waste is of particular importance to Texas. If any wastes produced in the maquiladoras along the border are illegally dumped, they will most likely be dumped or illegally stored within the Rio Grande watershed. The TNRCC, by the directive of the 75th Legislature in SB 843, has been required to study the cost and effectiveness of electronic methods used to track waste that is returned to the U.S. from Mexico. It is believed that an

¹⁷⁷ Additional information available at <http://gurukul.ucc.american.edu/TED/LAPAZ.HTM>

¹⁷⁸ TNRCC data available at <http://www.tnrcc.tx.us/exec>.

¹⁷⁹ The World Bank, "The World Bank Executive Project Summary: Mexico: Northern Border Environment Project, 1993," (1993).

¹⁸⁰ Texas Water Commission, Trends in Hazardous Waste Management (1993).

electronic tracking system can provide a reliable method to track the amount of hazardous waste that can be returned to the U.S. as well as the timing, method of transport, and destination of the waste. The results of this study will be presented to the Legislature in January 1999.

Additional Environmental Programs

In 1987, the 70th Legislature created the Advanced Research Program (ARP) and the Advanced Technology Program (ATP) to promote economic diversity within the state by funding research grants to Texas faculty members. The programs arose during a time when a decline in oil revenues had severely damaged the state's economy.¹⁸¹ The state hoped by funding these two programs it could stimulate scientific research and technological development to improve the state's economy.

The goal of the ARP and ATP was to generate a pool of highly trained specialists in Texas, to develop new technologies, and to support research that strengthens existing Texas industries. In pursuit of this goal, the Texas Higher Education Coordinating Board is charged with administering the programs that receive \$60 million biennium.¹⁸² Projects are funded in a total of 24 specific areas designated by statute. The ARP devotes its research to 12 fields to retain and attract the best students and researchers in order to create the knowledge base needed for innovation. The ATP funds 12 domains of study to promote the state's economic growth and diversification by increasing the number and quality of scientists and engineers in Texas; enlarging the technology base available to industry; creating new products and services; and attracting new industries to Texas.

Between 1991 and 1997, the ARP and the ATP have approved 1,485 projects for a total of \$240 million in state funds.¹⁸³ The Legislature should consider designating specific border environmental issues, such as water quality and availability, as high priority research areas to be funded through the Higher Education Coordinating Board's Advanced Research and Technology Programs. The designation of border environmental issues as high priority for funding and research will help direct the most capable students and researchers to direct their abilities toward these concerns.

International Interlocal Agreements

Interlocal agreements are a mechanism, long used in Texas, by which local governments can contract to share certain responsibilities, functions, facilities, or funding. International interlocal agreements are identical except in details of implementation because of different laws and legal systems. Although NAFTA did not address international interlocal agreements, it increased the need for local governments on the border to address problems that are not contained by the border. Although U.S. law permits international interlocal agreements, local governments in Texas must have specific authorization to do so.

¹⁸¹ Texas Higher Education Coordinating Board, "ARP/ATP Progress Report (1993 projects)."

¹⁸² Id.

¹⁸³ Texas Higher Education Coordinating Board, "Advanced Technology Program and Advanced Research Program Report of Awards," March 1998

Existing Authority

Any combination of Texas local governments and the State may currently enter into interlocal agreements for both operations and financing. Furthermore, a political subdivision of Texas may join with a public or private entity located proximately in New Mexico, Oklahoma, Arkansas or Louisiana for a variety of purposes including financing shared public infrastructure projects. U.S. and Mexican law theoretically give local governments extensive powers to form international interlocal agreements.

Not Necessarily a Federal Law Question

The United States Constitution does not prohibit all contracts between the states and foreign powers, nor do they all require acts of the U.S. Congress to take effect. The constitutional prohibition on states entering into treaties with foreign powers has been interpreted by the U.S. Supreme Court as not prohibiting contracts or requiring the consent of the U.S. Congress when such contracts do not infringe on the sovereign powers of the U.S. government. Consequently, a contract between the state or its political subdivisions and Mexico or its states and political subdivisions is permissible without Congressional approval if it does not infringe upon the sovereign powers of the U.S. government. However, Texas law does not grant specific authority to its subdivisions to form international interlocal agreements.

If Texas were to grant its subdivisions the authority to form international agreements, federal law requires them to satisfy a three-tiered level of legal review, according to case law in this field. First, a contract which affects sovereign powers of the U.S. government is permissible only if approved by Congress. Second, a contract which does not affect the sovereign powers of the U.S. government may be entered into without the consent of Congress, but would still be restricted by existing policies of the U.S. government, as authorized by a treaty or executive agreement entered into by the President of the United States with a foreign power. Finally, a contract which does not affect sovereign powers of the U.S. government, and for which no federal policy exists either through a treaty approved by the U.S. Senate or through an executive agreement approved by the President under his exclusive powers in international matters is permissible under federal law without constraint. However, the conditions of Texas statutes and local ordinances and of Mexican federal, state, and local law would apply to the agreement.

Existing Federal Policy

Executive agreements approved by the President under his exclusive powers in international matters have the same legal strength of a treaty ratified by the Senate and any other law passed by Congress. One such executive agreement between the U.S. and Mexico is an agreement between President Johnson and President Diaz Ordaz. That agreement, commonly referred to as the “*Agreement Regarding Economic and Social Development of the Border Area By Means of Cooperative Action*,” was adopted on December 3, 1966.¹⁸⁴ This Agreement remains in force, and empowers local

¹⁸⁴ This agreement is noteworthy in several respects. First, it expressed the interest and determination of two countries to “*improve the relations between the ‘frontier cities’ of both countries.*” Second, it establishes the governmental purpose and the policy objectives for the Agreement as well as for the two countries themselves, as “*rais[ing] the standard of living of the respective communities, from a social and cultural as well as a material point of view,*” that is, economic development. Third, it impliedly adopts “*cooperative action*” as a means for achieving this goal. Fourth, it utilizes “*cooperative action*” to elevate the standards of living in the border region and in effect serve as a statement of federal policy encouraging the states and their political subdivisions to enter into international interlocal agreements for economic development purposes on both sides of the border. Finally, it

governments in both the U.S. and Mexico to engage in cooperative action to improve the standards of living through economic development for communities on both sides of the U.S.-Mexico border.

Another executive agreement, the “*Agreement for Cooperation in the Field of Housing and Urban Development*,” gives the Secretary of Housing and Urban Development (HUD) the authority to select, facilitate, establish procedures to implement and manage all projects and programs initiated under this agreement. It grants HUD jurisdiction to engage, on both sides of the U.S.-Mexico border, in the entire range of activities it conducts in its “domestic” mission. Finally, it serves as a further statement of federal policy favoring approval of international interlocal agreements between U.S. and Mexican states, cities, and other local governmental entities in matters related to urban planning and development - joint infrastructure projects- in the U.S.- Mexico border region.

Experience Along the U.S.-Canadian Border

All U.S. states along the U.S.-Canadian border have laws authorizing international interlocal agreements. Examples include Michigan’s Urban Cooperation Act of 1967; Maine’s Canadian Exchange Advisory Commission; Minnesota’s “Minnesota-Piney Airport Authority” under which the State of Minnesota operates and owns an airport located in the local government district of Piney, Manitoba, Canada; and the Public Contracts and Indebtedness Chapter of the Washington State codes. Additionally, it was noted in testimony that every state bordering Canada has a “Canada Affairs Desk” operating within either an International Division in its Attorney General’s office, the Governor’s office, or one of its legislative staff offices.

Bond Issue Risks

Three mechanisms currently exist for reducing the inherent risks in bond issues by Texas political subdivisions through the purchase of insurance: (1) North American Development Bank (“NADBank”) guarantees; (2) Overseas Private Investment Corporation (“OPIC”) insurance for “expropriation” and “devaluations;” and (3) Export-Import Bank (“EXIM”) insurance to provide guarantees or insurance against the most common risks inherent in international investments.

NADBank was created by Congress to provide loans and guarantees of debt issued to finance infrastructure and environmental cleanup within 100 kilometers along the U.S.-Mexico border. NADBank is headquartered in San Antonio, Texas and after its recent reorganization, has been issuing loans.

OPIC was created by Congress to provide financing, guarantees, insurance and reinsurance of U.S. investments in certain countries around the world. Some of the risks for which OPIC assistance is available include: devaluations; expropriation or confiscation; war, revolution, insurrection, or civil strife; and business interruptions caused by these risks. OPIC’s offices are located in Washington D.C. and the Director of Insurance has advised that Mexico is not currently a “covered” country only because OPIC and Mexico have not yet completed negotiations on the “bilateral agreement.” However, OPIC

provides the mechanisms for federal approval of such agreements- specifically, it later amended language of the Agreement by removing the provision regarding the Joint Commission and designating the Department of State as the official to maintain contact between the two governments on matters related to cooperative action regarding border development. Despite this amendment the original mission and other terms of the Agreement remain intact.

and Mexico are continuing those negotiations at this time. Once finalized, their agreement will allow OPIC assistance for investments in Mexico in whatever form.

EXIM Bank was also created by Congress to aid in financing and facilitation of exports, imports and the exchange of commodities and services between the U.S. and any foreign country. In furtherance of its objects and purposes, the bank is authorized to guarantee notes, drafts, checks, bills of exchange, acceptances, and other evidence of indebtedness; guarantee, insure, coinsure, and reinsure against political risks and credit risks; purchase, sell and guarantee securities; issue letters of credit; borrow and lend money. EXIM's assistance is also available for expropriation and devaluations. Their headquarters are also in Washington, D.C. with a regional office in Houston, Texas. The primary difference between OPIC and EXIM is that EXIM assistance is available on projects with only "private" counter-parties, while OPIC assistance is available on projects with either public or private counter-parties.

In summary, all barriers to international interlocal agreements can be removed by taking the following actions:

1. Enact state legislation authorizing:
 - (a) Texas and its departments, agencies, and political subdivisions to enter into international interlocal agreements with Mexico, its states, and political subdivisions to accomplish any function which they are authorized to perform;
 - (b) Texas and its departments, agencies, and political subdivisions either jointly with Mexican political subdivisions or individually, to engage in, own and operate, develop, construct, repair, improve, and finance infrastructure, public improvements and facilities and activities, on both sides of the border, including the powers to borrow, spend, issue debt and pledge revenues and/or taxes;
2. Begin discussions with the federal government regarding the following two matters of federal policy:
 - (a) amend U.S. Tax Code for the following two limited purposes:
 - (i) extend the exemption on interest earned on state and local debt to include debt issued either individually or jointly by U.S. and Mexican local governments to finance infrastructure, public improvements and facilities and other governmental activities along both sides of the U.S.-Mexico border; and
 - (ii) include the NADBank, EXIM Bank, and OPIC within the "federal guarantee" exceptions of Section 149 of the U.S. Tax Code.
 - (b) encourage both countries to finalize the negotiations over the bilateral agreement regarding Mexico's inclusion as a "covered nation" under OPIC.

Border Health

The majority of health and human service issues affected by NAFTA center around NAFTA high-impact communities, which are generally located along the Texas-Mexico border region.¹⁸⁵ Testimony received at the NAFTA Committee's hearing in Mission, Texas confirmed that access to affordable health care is the most fundamental problem:

This is particularly noticeable in the lower socio-economic population where access to reliable health care services is limited and therefore compounded by increased economic growth without a comparable growth in available health services (particularly public health) for working poor families and the indigent population.¹⁸⁶

Almost 3.8 million Texans have no health insurance coverage at all, including 1.3 million children under the age of 18.

Health insurance coverage remains a critical issue throughout Texas. Almost 3.8 million Texans have no health insurance coverage at all, including 1.3 million children under the age of 18. Although programs such as the Children's Health Insurance Plan ("CHIP") or the Texas HealthyKids Corporation are attempting to address the problem of uninsured children, there is still the broader issue of service availability. A report from the Texas Department of Health's Bureau of State Health Data and the Health Professions Resource Center recently found that 62 counties throughout the state do not have an acute care hospital. Additionally, 25 counties statewide do not have a direct patient primary care physician.¹⁸⁷

Even when individuals have insurance, other barriers may exist, such as public transportation systems that are inadequate or nonexistent in the majority of rural border communities; language barriers resulting from an inadequate number of qualified translators or poor translations by untrained individuals; a gross lack of financial support for existing facilities, much less the addition of future facilities; and a lack of an effective health notification and education system.¹⁸⁸

¹⁸⁵ Other health and human services issues, such as welfare or other employment-related issues, are discussed more fully in Section II-Free Trade Effects on Texas Employment.

¹⁸⁶ Dr. Ron Tupper, testimony provided before the Senate Interim Committee on NAFTA, January 14, 1998, Mission, Texas.

¹⁸⁷ Texas Department of Health-Bureau of Community Oriented Primary Care, "Primary Health Care Program, Annual Report," July 1997 at 1.

¹⁸⁸ See generally Williams-Hastings Report, pp. 4-8 and Joel S. Meister, "Community Outreach and Community Mobilization: Options for Health at the U.S.-Mexico Border," an issue paper prepared for HRS, April 1996.

These problems are exacerbated by trade “flock[ing] to the border cities...on the U.S. side [which makes those communities] among the fastest growing cities and counties in the state.¹⁸⁹ As the population increases, so do the demands on the already over-taxed health care system. One indicator of NAFTA’s impact is that most of the Lower Rio Grande Valley clinics providing health services have operated at or above capacity for the past three to four years.¹⁹⁰ Another indicator is the ratio of available physicians to border residents: 101.1 to every 100,000 people, which falls far below the state average of 181.3 available doctors to every 100,000 citizens and even further below the national average of 233 available doctors to every 100,000 citizens.¹⁹¹

Testimony provided at one of the Committee hearings noted that much of the clinic overflow in Hidalgo County, representative of situations in other border counties, is due to the large migrant population there (43 percent of the total migrant population is in Hidalgo County). As seasonal workers flow into the area- often seeking minimum wage, basic labor, or partial or unskilled employment- their low salaries place them at risk of being denied access to vital health care services.¹⁹² These individuals are therefore forced to use acute care services (emergency rooms) for primary care treatment for services such as pediatrics, family practice, obstetrics, and gynecology.

Much of the clinic overflow in Hidalgo County, representative of situations in other border counties, is due to the large migrant population there...

This problem is not limited to border counties, however. According to Jonny Hipp, Administrator/Chief Executive Officer for the Nueces County Hospital District, the Lower Rio Grande Valley is not the only area to suffer the effects of NAFTA’s boom-- “...in Nueces County, we expect that county-level indigent health care costs will continue to increase...”¹⁹³

Disease Rates

The impact of the lack of access to health care in the Lower Rio Grande Valley is most evident in the unusually high rates of disease in the area. The Texas Department of Health recently conducted an inventory of Hepatitis A, a liver disease virus present in contaminated food and water.¹⁹⁴ Additionally,

¹⁸⁹ Testimony by Dr. Ramiro Casso provided before the Senate Interim Committee on NAFTA, January 14, 1998, Mission, Texas.

¹⁹⁰ Dr. Tupper, supra note 186.

¹⁹¹ Dr. Darryl M. Williams and Robert J. Hastings, Office of Border Health, Texas Tech University Health Science Center at El Paso, “Research and Technology in the Underserved Populations of the Border,” April 1996 at 2.

¹⁹² Dr. Tupper, supra note 186.

¹⁹³ Jonny F. Hipp, testimony before the House Subcommittee on Indigent Care and House Committee on County Affairs, May 6, 1998, Austin, Texas.

¹⁹⁴ Texas Department of Health, Epidemiology in Texas, 1996 Annual Report, (1996).

a Senate Finance Subcommittee examined whether to refurbish two state-run tuberculosis hospitals, one of which is located in Harlingen. The findings of both these reports confirm that Texas counties adjacent to the Texas-Mexico border have a disproportionate incidence of hepatitis A and tuberculosis, and especially multi-drug resistant tuberculosis (“MDR-TB”). For example, in 1996, approximately 9.6 percent of the state’s population lived in the 14 counties along the Texas-Mexico border, but accounted for 27.5 percent of the hepatitis A cases that year.¹⁹⁵

Although hepatitis ranks among the most common infectious diseases found in our state, there is still no hepatitis A vaccination requirement for children to enter school. To combat this situation, the Texas Department of Health has initiated a federally-funded vaccination program in high and intermediate risk communities- such as Cameron, Hidalgo, Maverick and Webb counties- to pay for the majority of vaccine doses administered to children in these areas.

It is unclear whether the Texas Department of Health can require school entry vaccinations only at geographically-targeted school districts.¹⁹⁶ A mandatory program may be necessary because the Texas Department of Health has generally found voluntary programs to have low rates of compliance. Given the nature of the public health threat from hepatitis A, and given that vaccinations are already required for hepatitis B,¹⁹⁷ it is advisable for the Department to further investigate the possibility of requiring hepatitis A vaccinations of school age children. While the federal government provides full funding for vaccines to children living in high-risk areas and in certain intermediate-risk communities, the fiscal implications of a statewide requirement are less clear.¹⁹⁸

The number of MDR-TB cases rose 38% in just one year (1995 to 1996).

Long considered a “dead” disease, tuberculosis is re-emerging in the alarming form of MDR-TB. The number of MDR-TB cases in Texas has risen dramatically in the past few years. For example, there were 13 reported cases in 1995 compared to 21 in 1996- an increase of 38 percent over one year.¹⁹⁹ Likewise,

nationally, the number of tuberculosis cases increased by 20 percent from 1985 to 1992. In Texas, the number of cases rose 32.7 percent during the same period. More recently, the

¹⁹⁵ Dr. Frederic E. Shaw, “Targeted School Entry Requirement for Hepatitis A Vaccination in Texas: Analysis,” Memorandum to SmithKline Beecham Pharmaceuticals regarding a targeted school entry requirement for hepatitis A vaccinations in Texas (December 11, 1997). Dr. Shaw is a leading consultant in epidemiology and disease control from Washington, DC.

¹⁹⁶ Id.

¹⁹⁷ Marjorie Hershey, “Hepatitis in Texas,” Comptroller’s Fiscal Notes, June 1998, at 6-7.

¹⁹⁸ Dr. Frederic E. Shaw, supra note 195.

¹⁹⁹ Texas Department of Health, “TDH Hospitals: Long-Range Plan,” prepared by Tonn & Associates, May 15, 1998.

number of [Texas] cases...grew from 2,393 in 1993 to 2,542 in 1996, an increase of 6 percent.²⁰⁰

One-third of the world's population is infected with TB, and each year there are 8 million new cases and 3 million deaths attributable to TB.²⁰¹ About 10 percent of all those infected with TB will eventually develop the actual disease. TB is further exacerbated by the fact that it coincides with an increase in the Acquired Immunodeficiency Syndrome (AIDS). Almost 10 percent of the world's tuberculosis cases are attributable to the virus that causes AIDS- Human Immunodeficiency Virus (HIV), because TB exposure to weakened immune systems makes it more likely TB will develop.

An increasing proportion of cases in the U.S. are found in individuals born in areas of the world where TB is common, such as Latin America and Asia. Cases coming from outside the U.S. increased from 22 percent of the national total of cases in 1986 to 36 percent in 1996.²⁰² A 1995 World Health Organization study concluded that Mexican tuberculosis rates were 110 per 100,000 people compared to the U.S. rate of 10 cases per 100,000 people. Mexico's higher TB rates are ostensibly due to the lack of diagnosis and/or treatment. Our 950-mile long shared border with Mexico -which has a long history of blended communities, both culturally and economically- also makes it more likely that TB cases in Mexico will continue to flow across that border and into Texas communities.

As a border state, Texas faces a unique challenge in managing and treating tuberculosis. The foregoing facts would argue that there is an undeniable need for Texas to continue-if not expand- its current TB services. Furthermore, this report argues that the existing facilities-located in San Antonio and Harlingen- are appropriately situated to deal with TB in Texas. However, testimony provided to the Senate Finance Subcommittee²⁰³ shows that both these two state-run facilities are in need of rehabilitation to bring them up to new building code standards. The question facing the Legislature is whether to invest in repairing the existing facilities or build a new ones. Although the Senate Finance Subcommittee has primary jurisdiction over the matter, it may be worthwhile to point out that the South Texas Hospital's situation is unique because it provides primary care to the indigent community, in addition to TB services. In fact, elimination of the services associated with this particular facility would put a large indigent population at risk of increased health complications.

The South Texas Hospital is the primary source for most indigent health care services in the Lower Rio Grande Valley. Therefore, closing it down is not a viable alternative...

²⁰⁰ Texas Department of Health, "Staff Performance Report to the 75th Legislature," page 97 (1996).

²⁰¹ U.S. Department of Health and Human Services, "Status of the Tuberculosis Epidemic in the United States," (December 1997).

²⁰² Id.

²⁰³ Texas Department of Health, "TDH Hospitals: Long-Range Plan," prepared by Tonn & Associates (May 15, 1998).

The South Texas Hospital is the primary source for most indigent health care services in the Lower Rio Grande Valley. Therefore, despite the fact that the TDH has put forth an option to close down STH, that is not a viable alternative for the Lower Rio Grande Valley or the State in its efforts to mitigate the spread of TB. There are several reasons for this. First, many patients are not able to travel to San Antonio or Galveston for treatment, either because they work 40-hour weeks or have unreliable transportation. Second, often indigent patients wait until their illness is significantly in an advanced stage before seeking treatment. This means that their treatment could last for long periods of time, which would require these individuals to be separated from their families and support networks. Third, Texas' definition of "resident" makes no reference to U.S. Citizenship- it is merely espousing an 'intent' to reside in Texas. This means that several individuals treated at South Texas Hospital as indigents are Mexican citizens, and could not pass border inspection points. However, the denial of treatment is not advisable as these patients could spread their illness to others around them, including other Texans, and raise the overall costs of indigent patient treatment in the Lower Rio Grande Valley. Finally, as economic development tools, hospitals help create jobs and generate spending and investment in their communities- South Texas cannot afford to lose any of its economic development generators at this critical time.

Solutions

It is both practical and efficient, to suggest the use A&M's School of Rural Public Health as a complementary entity for the Regional Academic Health Center, or "RAHC." The RAHC is a two-year medical school for third and fourth year medical students, residents and medical faculty. The RAHC's medical education programs are still in the formative stages, beginning with the \$30 million which has already been dedicated to the RAHC for an administration building. Building on the programs initiated by the South Texas Border Health Initiative, the RAHC can continue to work, in conjunction with expanded efforts of the A&M School of Rural Public Health, toward addressing the acute shortage of medical professional and technical support personnel.

The State created the Texas Department of Health's Center for Rural Health Initiatives, and the Texas A&M School of Rural Public Health whose mission is "to enhance the health and well-being of the citizens of Texas through excellence in education, research and outreach services focused on rural Texas."²⁰⁴ The School of Rural Health is committed to developing new partnerships on the multi-disciplinary development and implementation of a solution to the problems of health in the rural environment. Currently, the school is participating in projects with numerous entities including, but not limited to: Scott & White Memorial Hospital & Clinic; Driscoll Children's Hospital; Texas A&M University, Extension Services and Schools; Central Texas Veterans Health Care System; Texas Department of Health, Texas Department of Human Services, Texas Department of Mental Health/Mental Retardation, Texas Center for Rural Health Initiatives and County Health; and, Education Agencies. These efforts could be expanded and predicated on adequate funding for the daunting challenges involved in meeting rural health needs.

The Legislature has initiated efforts to address the health problems faced in the rural border region through the South Texas/Border Health Initiative that provided over \$500 million to the region. However, there was no clear and direct mission to address the full compendium of needs of rural border residents. The Initiative, because of the limited funding available, focused the majority of its attention

²⁰⁴ Texas A&M University-School of Rural Public Health Mission Statement briefing statement.

on urban areas such as El Paso, San Antonio, Laredo, Brownsville and Corpus Christi. The Initiative did not provide for the amount of specialized expertise needed in the border region for the array of health issues unique to the region or in the majority of the rural communities along the border.

Building on the available private and non-profit health resources in medically-underserved regions of the state is key to meeting the long term health needs of Texas. Numerous communities have begun the process of expanding local capacity to serve the surrounding populations, using an array of partners including universities, hospitals, clinics and private practitioners. Whenever

The state should encourage innovative public/private partnerships between health practitioners, universities, clinics, and communities...

possible, the state should encourage innovative public/private partnerships between health practitioners, universities, clinics, and communities to build long term sustainable local capacity to meet both the health education and health delivery systems needs in medically underserved areas of the state. These efforts should not duplicate existing services nor provide undue competition with private practitioners and clinics.

Testimony provided to the Committee indicates that increased funding for target programs, like the Community Oriented Primary Care program (COPC) directed by the Texas Department of Health, can make a huge difference with a minor investment. COPC programs, like the El Milagro Clinic in McAllen, treat the family as a unit in addition to the individual person. The importance health care treatment for the entire family as a unit is simple: During fiscal year 1996, COPC programs provided primary and preventive health care services to more than 109,000 uninsured residents across 99 Texas counties.²⁰⁵ Community-oriented programs provide a better chance of treating individuals with potential health problems before those problems get out-of-hand and become more costly.

Another program, "Put Prevention into Practice," focuses on prevention as a means of increasing general health standards in the NAFTA high-impact communities which tend to be located along the Texas-Mexico border. These programs are not entirely state-funded; programs such as the El Milagro Clinic also receive funds from the United Way and individual cities, such as McAllen. Community-based clinics can also offer public assistance screening to determine if a patient qualifies for any health care assistance they may not be aware of, like Medicaid or Medicare.

Adding to the problem of inadequate access to health care services in the Lower Rio Grande Valley is the notable lack of medical research and modern medical technology in the border region. Reasons range from prohibitive costs of supplies and inadequate instruction to lack of insurance and a lack of monitoring those who do have health care insurance.²⁰⁶ Examples of existing technology essential to modern diagnosis and management of many illnesses include imaging technology, such as ultrasound; mammograms; radiography, and electrocardiography, or ECG, which helps in the diagnosis and

²⁰⁵ Texas Department of Health-Bureau of Community Oriented Primary Care, "Primary Health Care Program, Annual Report," p. i (July 1997).

²⁰⁶ Id. p. 3.

management of heart disease. This lack of technology is debilitating; without it no effective health care system is capable of reaching a population as widely dispersed as the border population.

Border Health Institute (BHI)

Demographically and geographically, the greater El Paso region- which includes Ciudad Juarez and Southern New Mexico- would be an ideal location for an institution to coordinate upper Rio Grande Valley border health care, education, and research. The region has a combined population of more than two million and represents one of the largest integrated border communities in the world.

In El Paso, nearly one in five patients comes from Mexico.

A thriving health care industry could also attract and serve large numbers of Mexican residents along the Texas border who have historically come to Texas institutions for health care. Mexican residents are a very large part of Texas' private health market and represent a sector that will continue to grow. For example, in El Paso, nearly one in five patients come from Mexico.

The Border Health Institute (BHI) is a concept that calls for a collaborative partnership among existing regional institutions which provide health care or health education. Its operations (to be based in El Paso) would increase the efficiency of member agencies by streamlining existing activities and by eliminating unnecessary or duplicate services. It would function with minimal staff to plan and coordinate the region's general health needs. BHI would assess regional health requirements and conditions in West Texas, Northern Chihuahua and Southern New Mexico while promoting the development of specialized fields of knowledge not presently available in the region. It would also serve as a clearinghouse and data center for materials and information pertinent to upper Rio Grande Valley border health issues.

Housing and Colonias

The effect of NAFTA on housing is most keenly obvious in the colonias along the border. Therefore the following section revisits the colonias as a special subgroup in the general matter of housing.

The Economically Distressed Areas Program (EDAP) was established to bring water and wastewater services to the colonias. The program has been criticized for moving too slowly. During the last interim, the Senate International Relations, Trade and Technology (IRTT) Committee was directed to report on progress of the program. At that time, the Committee found grounds for optimism even though few projects had been completed. The Committee identified a number of weaknesses in the program, several of which were addressed by legislation passed in the 75th Session. During the current interim, many of the problems identified earlier have continued to plague implementation of the program.

Affordable housing is the cure for colonias.

The shortage of affordable housing where services already exist is the principal reason that

people continue to move into colonias.²⁰⁷ Although it is not practical to isolate the effects of NAFTA from the results of general economic growth, the rate of growth on the border has exceeded state and national rates for several years, despite persistent poverty and unemployment.²⁰⁸ The consequence is a highly competitive housing market with corresponding inflation. At the same time, this growth is occurring in a region where wages are extremely low. Over 41 percent of the residents of the border live below the poverty line.²⁰⁹

Although HB 1001 (74th) may have virtually stopped the creation of new colonias, existing colonias contain undeveloped property that will continue to attract new residents from among the low-income residents of the border who believe that they have no other option. Although a colonia cannot receive assistance from the Economically Distressed Areas Program (EDAP) unless 80 percent of the lots are sold, a substantial number of lots may remain empty. However, densification or build-out of the colonias where water and wastewater systems are completed is one solution for the shortage of affordable housing on the border.²¹⁰

The major hindrance to completing the EDAP program is that the Legislature did not grant the Texas Water Development Board (TWDB) the authority to initiate projects, participate in planning, hire consultants or otherwise to take decisive steps to get projects done. The only option for the TWDB has been to play its traditional role as the bank for water projects. Unfortunately, that role is too constricted to overcome the complicated roadblocks that stand in the way of completing colonia projects. There are many examples of local inaction, mismanagement, and abuse of the state's attempts to assist colonia residents. For example, the TWDB has been forced to use inadequate sponsors when no other option was available, and projects have been delayed unnecessarily by malingering contractors, local political conflicts, and sheer incompetence at the local level. Such problems have permitted dangerous conditions to continue to threaten the health and safety of Texas residents. The TWDB needs the power to address knotty local problems that stand in the way of providing EDAP services to the people who have waited since 1989.

At the same time, local ownership of EDAP projects, both in the literal and symbolic senses, is important. The State should take control of a project only when local efforts prove inadequate. Therefore, the legislation should incorporate sensible triggers such as failure to meet reasonable deadlines or the inability of the local sponsors or contractors to complete plans before permitting the TWDB to take over any phase of an EDAP project.

If the Legislature chooses to give the Texas Water Development Board broader authority to initiate a colonia project or to take over a project, the Legislature should provide an objective mechanism to

²⁰⁷ Report to the 75th Legislature, Senate International Relations, Trade and Technology Committee, September, 1996 at 30, 50, 51.

²⁰⁸ "Current Population and Housing Characteristics, Future Growth, and Housing Water and Wastewater Need," Policy Research Project, Lyndon Baines Johnson School of Public Affairs, January, 1996.

²⁰⁹ Id.

²¹⁰ Peter Ward, Chapter 6, Colonias and Public Policy in Texas and Mexico: Urbanization by Stealth, UT Press, 1998.

decide when the TWDB should step in. The TNRCC's Managerial, Financial and Technical (MFT) evaluation is a tested method of determining the capacity of a water utility or project sponsor, and would provide assurance that a project takeover is not arbitrary. In any case, the board should take the minimum effective action to bring a sponsor or operating entity into compliance including requiring the entity to undergo training or to take other remedial action, and the board shall adopt rules to limit the period that the TWDB will have planning or operational responsibility.

Furthermore, the MFT process might be applied beneficially to EDAP projects to ensure that they are properly managed and operated after they are completed. The MFT process is created by the U.S. Safe Drinking Water Act, 42 United States Code § 1452(a)(3)(A), which states that the Drinking Water State Revolving Fund may not be used to provide assistance to a public water system that does not have the technical, managerial, and financial capability to ensure compliance with the requirements of the drinking water standards. TNRCC currently contracts with the Texas Rural Water Association to evaluate the MFT capacity of small utilities. It is not uncommon for Drinking Water State Revolving Fund (DWSRF) loans to be held pending resolution of management, financial or technical shortfalls.

The MFT process is designed to be used as a constructive tool to bring operating entities up to the standards. Application to EDAP projects should follow current practice in the MFT process, in which the operating entity can be given:

- a) full approval;
- b) suggestions or recommendations that can then be incorporated as conditions in the EDAP grant contract or further assistance;
- c) requirements or remedial steps that the entity must be complete before being approved to receive a commitment for or continuation of EDAP funding;
- d) rejection for assistance.

Although this last option may seem harsh, it does not mean that a colonias would not be served, only that the system operator under consideration would not be used. In this case, the TWDB should issue a request for proposal (RFP) for an area utility which could provide the service or utility management firm to complete the EDAP process and operate the system. The option of using an outside management firm should be chosen only when an appropriate public water system is not available. In any case, the management contract should include training a local entity to operate the system with the goal of eventual takeover.

Diversion of Water Utility Revenues

When entities that receive EDAP assistance use water and wastewater revenues from the EDAP project for general revenue purposes, it is equivalent to misappropriation of state money. At the same time, many cities use enterprise revenues for general purposes and does little harm unless responsible operation of the utility is compromised. Unfortunately, many small utilities and small cities tap into vital maintenance and operations funds, charge unnecessarily high rates, or both. Again, irresponsible utility management is an issue only if residents object to it or if it violates state or federal law. However, it is not unusual for a municipality that has incorporated for the purpose of applying for EDAP assistance to attempt to use utility revenues to subsidize other municipal services. Not only may underfunding maintenance and operations of a water utility result in unsafe drinking water, but in some cases, rates charged may exceed the ability of the community to pay, defeating the goal of the EDAP program to achieve universal service with maximum individual responsibility.

Certificates of Convenience and Necessity

Conflicts over service areas (CCNs) have delayed EDAP projects unnecessarily. Contested cases typically take months and often take years to solve. The cost to public entities is exorbitant. In one case, the City of Mission, which was not a principle party to a service area dispute, spent \$10,000 to produce copies for one discovery request for information by one side in a contested case over an EDAP service area.

A Certificate of Convenience and Necessity (CCN) is a grant of a monopoly or exclusive right to provide a specific service in a designated area. CCNs are used where provision of the service requires the installation of infrastructure throughout a geographic area. Frequently, infrastructure financing would be impossible without government assurance of exclusivity, and some utilities actually receive government subsidies in the form of low interest loans. However, a CCN is not a property right; its only security is the existence of outstanding bonds with covenants that are enforceable in court. In practice, that is an unassailable level of security.

A water service provider in an unincorporated area must obtain a CCN from TNRCC in order to legally provide service. Municipalities are not required to obtain CCNs within their city limits. In the extra-territorial jurisdiction (ETJ) of a city or within its expected growth corridor, the city must obtain a CCN in order to extend service. Frequently the city comes into conflict with existing service providers.

CCNs have traditionally been drawn to exclude colonias. However, the prospect of an EDAP project with its guaranteed market for services often leads service providers in the vicinity to apply for CCNs that will give them the exclusive right to provide the utility service. The provider who succeeds in getting the CCN first has the presumptive right to apply for EDAP funding. Therefore, whichever application is submitted first becomes the target for a contested case brought by competing service providers.

Because of the exorbitant waste of time and money that results from CCN conflicts over EDAP projects, the Legislature should give serious consideration to directing TNRCC to expeditiously resolve conflicts between local service providers. The resolution should focus on which entity has the right to serve an area that is eligible for EDAP funding. It should also give preference to the provider who has the highest rating of managerial, financial and technical (MFT) capacity. Finally, the Legislature should direct TNRCC to give first priority to resolution of service provider conflicts requested by the TWDB.

General Housing Market Conditions in Texas

Projections indicate the increased demand for affordable and low income housing in many of our Texas cities.²¹¹ Nowhere is this more prevalent than in fast growing, high NAFTA impact communities where affordable and low-income housing stock is all but depleted. NAFTA high impact communities are those that are directly affected by increased demand on their basic infrastructures because of population growth, transportation increase and trade increases.

²¹¹ Texas A&M Real Estate Center, "Income and Growth Projections - 2005," press release, November 17, 1996.

By the year 2000, it is estimated that more than 1.9 million Texas households will need some form of housing assistance. Federal housing policy will continue to have a substantial impact on both the state's budget and its ability to meet Texas' housing and community development needs. This is because approximately 90 percent of the budget for the Texas Department of Housing and Community Affairs is comprised of federal funding, and federal law mandates the manner in which the bulk of these funds must be spent.

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Population Growth and Impact on Housing Needs in Texas

The Center predicts that during the next decade, a wide range of population and income growth is expected throughout the state's 27 Metropolitan Statistical Areas (MSAs).²¹² Most Texas cities are projected to show higher population growth than the national average which is forecast at 11.8 percent. Austin and San Marcos appear among the 20 fastest growing areas of the nation at 25.3 percent. Wichita Falls--at 3.1 percent--is the only Texas MSA in the lowest 20. Laredo and McAllen-Edinburg-Mission expect population growth more than twice the national average, resulting from immigration and a relatively high natural increase rate.

By 2005, national per capita income, is projected to be 15.5 percent higher than in 1993. All Texas MSAs except Houston are expected to meet or exceed the national rate of per capita income growth. By 2005, Dallas, Fort Worth-Arlington and Houston will be the only

Texas ended 1997 with 10 percent fewer homes available for sale than in 1996.

Texas cities with an average income higher than the nation's. Texas border MSAs will continue to rank at the bottom of the average income scale. The four lowest-ranked cities in the nation in constant 1987 dollars include El Paso (\$11,710), the Brownsville, Harlingen, San Benito MSA (\$10,471), Laredo (\$10,221) and the McAllen, Edinburg, Mission MSA (\$9,399).

Texas home sales were higher in 1997 despite fewer houses and higher prices.²¹³ However, 4 percent more homes were sold by the state's Multiple Listing Services (MLS) in 1997 than the previous year. The inventory of unsold existing homes was 10 percent smaller, and the median price was 4 percent higher. "More than 143,450 homes were sold through MLSs in major Texas cities last year," says Mark Baumann, the research scientist monitoring data for the Center. "This resulted in a tighter housing market with the housing inventory falling to only 6.5 months and the median sales price rising to \$90,300."²¹⁴

²¹² Id.

²¹³ Id.

²¹⁴ Id.

As expected, the state's largest city recorded the most home sales. The Houston MLS reported 40,452 sales. Dallas followed with 32,884. Austin was third with 12,099 while San Antonio tallied 11,050. Home sales in other Texas markets included Northeast Tarrant County's 5,647; Fort Bend County, 5,362; Fort Worth, 4,773; El Paso, 3,931; North NASA, 3,757; Plano, 3,579; Arlington, 3,432; Montgomery County, 3,376.

"Texas ended 1997 with 10 percent fewer homes available for sale than in 1996," says Baumann. "The residential sales market was tightest in Garland where only a 4.2-month supply existed at years' end. Irving and Plano were almost as tight with a 4.4-month supply each." Other markets with small inventories of unsold existing homes included Northeast Tarrant County, five months; Lubbock, 5.2 months; Dallas and Victoria, 5.4 months each; and Arlington, 5.6 months.

"Less expensive Texas homes sold well in 1997," says Baumann. "More than 56 percent of Texas homes sold through the MLS in 1997 were priced less than \$100,000. Median prices ranged from \$147,900 in Plano to \$54,800 in Palestine."

Homes sold by metropolitan MLSs were on the market less time in 1997 than in 1996. The average time required to sell an MLS home in 1997 was 99 days — 6 percent fewer days than 1996. In Palestine, homes were on the market an average of 240 days compared to Garland's 64-day average. San Antonio's homes averaged 132 days to sell. In Houston, the average was 106 days. Fort Worth averaged 94, Austin 91 and Dallas 82 days respectively.

Because of the increased demand and the limited supply of single-family homes in Texas, the demand for manufactured housing is also increasing. Based on information collected by the Center²¹⁵ listing contracts for property containing manufactured housing units could become more common in rural and suburban settings.

"Manufactured housing is expected to become more popular, especially in rural areas," says Jack C. Harris, a research economist at the Real Estate Center at Texas A&M University. "This could mean that real estate agents will increasingly encounter manufactured homes in addition to traditional site-built homes."²¹⁶ According to the 1990 Census of Housing, manufactured housing comprised almost 13 percent of the Texas housing stock. In 1996, manufactured units made up more than one-third of all new Texas single-family dwellings; price is the primary reason for the increasing popularity of manufactured homes. They are produced for less than \$30 per square foot (about half the going rate for new homes). The Texas Manufactured Housing Association found the average price of a manufactured unit produced in Texas in 1996 to be \$34,725 (including delivery and installation but not site, a sales tax and utility hook-up).

During that same period, the average existing home sold through Multiple Listing Services cost \$109,500 (including land), and the average new single-family unit built in Texas was valued at \$103,900 (without land). Manufactured housing is becoming more acceptable to home buyers and their

²¹⁵ Texas A&M Real Estate Center, "Increased demand for Manufactured Housing,," press release, March 3, 1998.

²¹⁶ Id.

neighbors because the quality is changing. It is now standard to make units look more like traditional houses rather than like travel-trailers.

High-quality schools positively impact residential property values while mobile home parks appear to have the opposite effect.

Mortgage loans are only available if the manufactured housing unit becomes a fixture to real property. If the unit qualifies as real property, it can be financed with loans insured through the Federal Housing Administration (FHA) Title II programs, like site-built homes. "Chattel" financing, similar to automobile financing, is available for units that do not qualify as real property. This type of loan is also available through the FHA Title I Program.

"City zoning authorities justify heavy restrictions on manufactured housing on the basis of detrimental effects to surrounding property values," Harris says. "However, a North Carolina study in the 1980s found that site built homes located near manufactured units were as likely to sell for a price greater than the appraised value as those without the presence of such units." However, in another study²¹⁷ on the influences on residential property values, it was noted that high-quality schools positively impact residential property values while mobile home parks appear to have the opposite effect.

Researchers at Cleveland State University examined 95 school districts in northeast Ohio, defining school quality by the number of students passing proficiency exams. They conclude that high-quality schools-both public and private-have a positive impact on residential property values, regardless of the buyer's socioeconomic characteristics or income.

Mobile home parks, however, seem to drop the values of nearby urban residential properties, according to a study by researchers at the University of Georgia and Louisiana State University. An examination of more than 4,200 properties in East Baton Rouge Parish, Louisiana, concludes that residences closer to mobile home parks sell for less than similar residences farther away. The same held true for residences within city limits and in suburban areas.

NAFTA high-impact communities suffer a disproportionate impact in the availability of housing resources. Housing affordability is a major problem in Texas border communities. "The absence of affordable housing in these communities is a major contributor to the growth of colonias and substandard living conditions in border counties."²¹⁸ A survey of colonia residents found that the lack of affordable housing options was the overwhelming reason why they moved to a colonia.

NAFTA high-impact communities suffer disproportionately in the availability of housing resources.

The rate of growth along the border has well exceeded both the Texas (non-border) and national averages. The Texas border area is one of the poorest areas in the country and contains some of the poorest cities in the nation. More

²¹⁷ Texas A&M Real Estate Center Newsletter - TRE&Y No. 54 -796, July 1996.

²¹⁸ Border Low Income Housing Coalition, Border Low Income Housing Coalition Report, (1996).

than 85 percent of border residents live in Cameron, El Paso, Hidalgo, Starr, and Webb counties, and 41 percent of these residents -- versus 18 percent statewide -- live in poverty. All five counties have an unemployment rate that exceeds 10 percent, with an aggregate unemployment rate of 13.5 percent. In contrast, Texas and the US have unemployment rates between six and 7 percent, respectively.²¹⁹

With such growth and poverty, adequate and affordable housing is naturally a problem. In 1990, there were 623,699 households in the border EDAP counties. Among these households, 21 percent (128,000) were paying unaffordable housing costs. Using an average annual growth rate of 2.9 percent and an average household size of 3.3 people, we can estimate that in 2010, there will be 804,533 households in these EDAP counties, 166,152 of whom will pay unaffordable housing costs. Thus, in 14 years, a total of 574,223 border residents will live in unaffordable conditions.

Virtually all colonia residents are Hispanic. However, 64 percent were born in the U.S., while only 20 percent are foreign born. A TDHS survey found that 67 percent of those over 18 years of age had not finished high school. In rural colonias, about 30 percent of the employed persons 16 years and older worked in agriculture, while in urban colonias, fewer than 10 percent of residents were employed in agriculture.

The rate of growth along the border has well exceeded both the Texas (non-border) and national averages.

The State appropriately cracked down on the colonia problem during recent legislative sessions. In 1995, Texas legislators prohibited developers from selling plots without plans for water, sewer and electric hookups. Since 1989 both the Texas Legislature and the U.S. Congress have provided funds for self-help centers in the colonias and have underwritten physical improvement projects.

Testimony provided by a delegation of the membership of Valley Area Interfaith in Mission, noted that colonia developers have not had a good track record in complying with state ordinances. In some instance, local county enforcement and documentation methods were found to be lacking.²²⁰ Continued strong enforcement and training by state agencies involved in meeting the needs of these colonias is vital.

More than 85 percent of border residents live in Cameron, El Paso, Hidalgo, Starr, and Webb counties, and 41 percent of these residents -- versus 18 percent statewide -- live in poverty.

The Legislature should consider expanding funding for the five existing Self-Help Colonia Centers and additional sites based on evaluation of need by the TDHCA. Self-help centers have become an important means for identifying leaders, addressing issues and as a means by

²¹⁹ The Policy Research Project of the Lyndon Baines Johnson School of Public Affairs, "Current Population and Housing Characteristics, Future Growth, and Housing Water and Wastewater Needs," (January 1996).

²²⁰ Testimony provided by the Texas Water Development Board to the Senate Interim Committee on Housing and the Senate Interim Committee on NAFTA, April 15, 1998.

which to disseminate community information. This work has helped to build the sense of community that many colonias lack. Colonia Self-Help Centers were authorized as a result of SB1509, 74th Legislature. There are five counties (El Paso, Webb, Starr, Hidalgo, Cameron/Willacy) with centers. The centers may provide technical assistance in housing finance and rehabilitation, new construction, surveying and platting, construction skills, tool library, credit and debt counseling, grant preparation, infrastructure construction and access, contract-for-deed conversions and capital access for mortgages and other improvements.

Elderly Population Housing Needs in Texas

According to 1996 U.S. Census data, there are 1,951,000 Texans 65 years of age and older, representing 10.2 percent of Texas' total population. Texas' population is somewhat younger than the nation as a whole, but our older population is comparatively poorer than the national average. Across the United States, 11.47 percent of older Americans are below the poverty level, while in Texas that percentage is 14.49 percent. More than 282,000 Texans 65 years of age and older live below the poverty level. Not only are the numbers and percentage of the older population increasing, but the older population is itself getting older. The most rapidly growing population segment is the 85 and older group which contains 257 females for every 100 males. Many in this group live alone.

The 1998 State Low Income Housing Plan and Annual Report, prepared by the Texas Department of Housing and Community Affairs, identifies the elderly as a special needs' population. The Report also

A healthy Texas economy does little to help older persons living on fixed incomes.

notes that frail elderly persons form a special group that needs medical and social services in addition to basic housing. However, the amount of housing that has been developed for the elderly through state programs has been limited. There is a need for the State of Texas to address critical housing needs overall so that the supply of affordable housing will rise to meet the needs of all

low-income persons. The State Legislature should consider directing the TDHCA to increase the supply of subsidized housing for the elderly by modification of its programmatic allocation formulas.

A healthy Texas economy does little to help older persons living on fixed incomes. Even as the economy has reduced welfare rolls in Texas, many others find they face greater challenges. For many people rising rents are jeopardizing the shelter not only of the poor, but of the near poor, including increasing numbers of the elderly who have little or no opportunity to increase their income. For the older person living below the poverty level, or even above the poverty level in areas of rising rents, it

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There continues to be a great demand for subsidized housing for the elderly. Current programs are meeting only a fraction of this demand. Unfortunately, federal funding cutbacks are now reducing these programs. Nationally, for every subsidized apartment unit for the elderly there are eight individuals in need on the waiting

list. In Texas the need is even greater. For many years now the primary program for low-income housing for older persons has been the federal Section 202 program administered by the U.S. Department of Housing and Urban Affairs (HUD). The Section 202 program provides capital advance funding for new construction, rehabilitation, or acquisition to private, nonprofit sponsors to develop affordable housing for very low-income elderly. Eligibility for the Section 202 program is primarily for very low-income persons age 62 years and older. The average tenant in the Section 202 program is a frail older woman in her mid-70's, living alone with an income less than \$10,000 a year. Twenty to 30 percent of older residents in federally assisted housing are frail and at risk for more costly institutional care. Although the Section 202 program has been a tremendous success, funding has dropped significantly since the late 1970s when more than 20,000 units a year were funded. Last year Congress appropriated \$645 million to build approximately 7,000 units in 1998. For fiscal year 1999, the White House budget request for Section 202 project based capital advance is just \$109 million to develop 1,500 units of new housing. Texas' share would be only enough to support two new projects in the entire state. Along with these reductions, HUD is considering folding Section 202 into state block grants. It will be an increasing responsibility of the states to seek new and creative mechanisms to meet the growing need of low-income housing for the elderly.

The Low Income Housing Tax Credits (LIHTC) Program provides incentives to private investment in affordable housing by financing, through the use of a federal income tax credit, a portion of a multifamily rental project's development costs. Currently, Texas receives approximately \$27 million annually. This amount, however, falls tragically short of meeting the demand for tax credits as the Texas Department of Housing and Community Affairs (TDHCA) typically receives more than \$4 in requests for every \$1 available.²²¹ In Texas, nearly 74,000 units of affordable rental housing have been created since the LIHTC Program's inception.

It will be an increasing responsibility of the states to seek new and creative mechanisms to meet the growing need of low-income housing for the elderly.

Last year only 8 percent of the units awarded in Texas under the TDHCA Low Income Housing Tax Credits (LIHTC) were targeted for seniors, although in Texas 13.7 percent of the population is above the age of 60. The Texas Association of Homes and Services for the Aging believes that the LIHTC allocation plan should be more supportive of senior housing.²²² As currently constructed, the allocation plan could be more supportive of senior housing. The State Legislature should direct the TDHCA to amend the LIHTC allocation plan, to provide recognition of lower operating expenses for senior housing by calculating expenses on a square footage basis rather than a per unit basis.

²²¹ Testimony provided by Jeff Clark, Director of Governmental Relations (TDHCA), to the Senate Interim Committee on Housing on February 24, 1998.

²²² Testimony of Mr. David Latimer, Vice President for Government Affairs (Texas Assn. of Homes and Services for the Aging), to the Senate Interim Committee on Housing February 24, 1998.

Innovative efforts must be made to get more out of existing dollars and to increase the amount of funding available to support affordable housing. In 1987, the Texas Legislature enacted the Housing for Elderly Program under the state Housing Finance Corporation. This program requires developers of multifamily projects of 20 units or more who receive bond financing from the Housing Finance Corporation to set aside at least 5 percent of the units for low-income elderly persons or for moderate income families headed by and elderly person. In lieu of this set aside, the developer may pay a fee of one-tenth of one percent of the total principal. The fee is collected by the state and appropriated to the Texas Department on Aging to support housing programs for the elderly. This program has generated only modest funds over the years, but the concept has been used more extensively in other states to provide more funding for low-income housing programs. The State Legislature should consider directing the Texas Housing Finance Corporation to increase the set aside provisions of the Housing Finance Corporation from 5 to 10 percent. This increase in set aside would be used to provide more funding for low income senior housing projects that provide support services.

For low-income frail elderly who cannot afford a market rate assisted living, set asides for licensed personal care homes or fee payments in lieu of set asides could create a source to expand low-income senior housing that provides support services. Increased sources of funding should be explored given federal devolution of many housing programs that have supported elderly housing, and the decreases in home health care costs reimbursements for the elderly. The State Legislature should consider directing the TDHCA to find ways to improve the profitability of serving low-income home buyers in the state's bond programs.

Older Texans influence the Texas real estate market. Although Texas has a median age two years younger than the country as a whole, it remains a target-rich



Chart 3: (Source: *Steve H. Murdock, Department of Rural Sociology, Texas A&M University*)

environment for retirement community developers. A recent study found that more than one in 20 Americans older than age 64 moves each year.²²³

Everyone does not need the same level of housing, say researchers studying trends among senior home buyers. Most seniors move because of health issues, loss or disappearance of support groups or the inability to care for an existing home. The key factors for relocating are medical treatment access, the proximity to a hospital and, shopping and the availability of both home and personal care service. Also, public transportation and planned social activities including group recreation are important considerations.

Just seven years ago, six of every 100 elderly persons (65 and older) in the United States lived in mobile homes. Of that 6 percent, nearly 92 percent were owners. In Texas, the elderly comprise many of the one-out-of-12 residents in mobile homes or trailers.²²⁴

Owning a home represents 70 percent of the net worth of the elderly. However, more than 40 percent of seniors with incomes less than \$25,000 have no other savings. By contrast, only 31 percent of seniors with incomes greater than \$25,000 do not have savings. Chart 3 illustrates the dramatic problem of the high levels of elderly in the border region that live in poverty.

A study conducted by Karl Guntermann of Arizona State University found that mobile home sales were 30 percent higher in subdivisions labeled "seniors only" versus similar properties unrestricted by age. This is true even after adjusting for other things such as property age, size, single versus double-wide, roof pitch, garage covers and deed restrictions.

In testimony provided before the Senate Interim Committee on Housing, a representative of the Texas Association of Homes and Services for the Aging noted that "the state must examine initiatives to

Not only is the number of low-income elderly people growing, but funding for federal elderly housing programs is being significantly reduced.

address the housing needs of the elderly in Texas." Not only is the number of low-income elderly growing, but federal housing programs for the elderly are being significantly reduced.²²⁵

This association represents 176 not-for-profit providers of housing and health care services for the elderly. The membership is diverse and includes nursing facilities, personal care homes, assisted living, independent living housing, and

multilevel communities providing a continuum of care on a single campus.

There is a concern about the shortage of safe, decent, and affordable housing for low-income Texans of all ages. For the growing number of low-income elderly who face a housing crisis, there is a need

²²³ Texas A&M Real Estate Center Newsletter - TRE&Y press release (November 9, 1997).

²²⁴ Texas A&M Real Estate Center Newsletter - TRE&Y press release (October 9, 1997).

²²⁵ Testimony provided by Mr. David Latimer, Vice President for Government Affairs (Texas Association of Homes and Services for the Aging), to the Senate Interim Committee on Housing February 24, 1998.

to not only provide more subsidized housing but to create programs with support services as well. Support services enable the frail elderly to remain independent and to avoid premature and costly nursing home placement.

There has been an explosion of privately developed assisted living in Texas in recent years. These facilities are costly and beyond the reach of persons who are already unable to pay basic rent. Based on this organization membership experience, it is believed that housing with services models can serve as assisted living programs for those with limited incomes. These programs can meet a critical housing need in the state and provide an economic alternative to more costly and often inappropriate nursing facility placement.

The State Legislature should consider directing the TDHCA to work with not-for-profit providers to increase affordable assisted living opportunities. Not-for-profit organizations have developed many different approaches to housing with services models for low-income elderly. By working with governments and other entities, a wide variety of models have been developed and are thriving. Texas should take a more active role in promoting the development of housing with services for frail elderly persons. Housing with services are consistent with state policy goals of encouraging independence and autonomy and the provision of appropriate services in the least restrictive setting possible.

Support services enable the frail elderly to remain independent and to avoid premature and costly nursing home placement.

The State Legislature should also consider directing the TX Department of Health, TX Department on Aging and the TDHCA to link low-income senior housing and community services. HUD-sponsored service coordinators are limited and some existing service coordinators may be eliminated, so appropriate state and local agencies should explore ways to provide service coordination in existing sites. Nutrition centers, senior health clinics, senior activity clinics, and childcare with inter-generational activities are all examples of programs that could be collocated with housing programs. The centers provide services to the housing residents as well as to others living independently in the community.

According to a study completed by State Comptroller's office ("Bordering the Future"), serving low-income buyers would be more profitable for lenders and real estate agents if the profit margin on low-value sales was higher than usual, or if the amount of time necessary to serve a low-income family was reduced. The former goal could be accomplished by targeting payments to those involved in the real estate transaction while part of the administrative burden of serving low-income households could be addressed by non-profit organizations and home-

Nutrition centers, senior health clinics, senior activity clinics, and childcare with inter-generational activities are all examples of programs that could be collocated with housing programs.

buyer assistance programs. TDHCA should evaluate both approaches and report to the Bond Review Board and the Legislature on the effectiveness of incentives in improving service for low-income clients.

The State should also work with one or more construction supply companies to administer an interim construction loan program for owner-builders. The State Legislature should consider directing the TDHCA to establish an owner-builder interim construction loan program in partnership with construction supply companies, and TDHCA should guarantee a percentage of the value of loans made through the program.

Along with the administration of the loan, the supplier would agree to provide technical assistance to the owner-builder and to facilitate the inspection process or to perform inspections for projects outside city limits. TDHCA should develop the program in consultation with local building inspectors so that the program can include an incremental inspection process. The interim construction loan should be available to those individuals and families who need to expand or rehabilitate homes, as well as those who are starting from scratch.

TDHCA should work with non-profit groups that have already begun testing rehabilitation loans and “self-help” owner-construction approaches. Local groups and housing agencies could also put up loan guarantee pools using their own funds if they chose. As part of the owner-builder loan programs, TDHCA should refinance or facilitate refinancing of lots purchased through contract for deed where the buyer wants to apply for an owner-builder loan.

Guaranteeing owner-builder loans would improve the quality of owner-build homes, decrease the cost of financing, and ensure that the end result is a valuable piece of real estate in which the builder has money equity, not just “sweat equity.”²²⁶

Disabilities and Housing Needs in Texas

“Supported housing is a highly desirable, cost-effective option for most Texans with severe mental illnesses.”²²⁷ As many as 6,000 individuals with serious mental illnesses who are currently served by the Texas Mental Health Mental Retardation (TXMHMR) System are homeless or currently living in inadequate/unsafe

As many as 6,000 individuals with serious mental illnesses who are currently served by the Texas Mental Health Mental Retardation (TXMHMR) System are homeless or currently living in inadequate or unsafe housing, or in unlicensed care homes.

²²⁶ Comptroller, *supra* note 29.

²²⁷ Testimony provided by Ms. Bonnie Siddons, Executive Director (Mental Health Housing Development Corporation), to the Senate Interim Committee on Housing, February 24, 1998.

housing, or in unlicensed care homes.²²⁸ Many persons with the greatest impairments, rely on Supplemental Security Income (SSI), which provides an income of approximately \$484 per month. According to a 1993 study on the affordability of housing among individuals with severe mental illness, there is not a county in the United States in which an individual dependent on SSI can afford an efficiency or one bedroom apartment.²²⁹ The study report that “individuals with incomes below 30 percent of the median income have essentially no access to integrated housing options in their communities.” HUD has experienced cutbacks in funding over the past several years- especially in public housing and Section 8 rental assistance programs, two programs available to persons with very low incomes.

There is a critical need in Texas for affordable housing for severely disabled individuals with very low incomes, including many individuals with severe mental illness. Here, many housing resources are geared toward persons with incomes at 50 percent of the area median income. For an individual living in Austin, area median income (categorized as very low versus low by the TDHCA) is \$17,800 per year. Fifty percent of this area median income would equal \$8,900. A person with severe mental illness who receives SSI, receives \$484.00 per month, or \$5,808 per year, which is 33 percent of the Austin area median income. The fair market rent in Austin for a one bedroom apartment is \$427.00. An individual on SSI would pay approximately 88 percent of their income toward rent, leaving other basic needs unmet. In Wheeler County, a non metropolitan area, the median income for individuals is \$12,700. An SSI recipient would have income equal to 46 percent of area median income. Fair market rent for a one bedroom apartment there is \$271.00. An individual living on SSI would pay 56 percent of their income toward rent. HUD guidelines consider housing affordable if an individual does not spend more than 40 percent of their net income on rent.

Individuals with incomes below 30 percent of the median income have essentially no access to integrated housing options in their communities.

As a result of its housing and residential services policy, TXMHMR funded a three-year research demonstration project to provide individualized in-home supports and temporary rental assistance to individuals with severe mental illness who wanted to live in regular community housing. The project served more than 400 individuals initially and included an evaluation component to measure the effects on state hospitalization rates and quality of life. The findings were impressive and showed a marked decrease in hospitalizations and improved quality of life. Due to the success of the supported housing demonstration, in 1995 TXMHMR required supported housing in all of its contracts with community mental health and mental retardation centers across the state. In FY 1997, the TXMHMR, provided supported housing services to more than 4,000 Texans with severe mental illness. Funding for support has occurred through the redirection of human and fiscal resources. Currently, supported housing is seen as the preferred approach to the housing needs of persons with severe mental illness. While the

²²⁸ TXMHMR Uniform Assessment (October 1997).

²²⁹ McCabe, (1993).

effectiveness of supported housing has been demonstrated, the major barrier and challenge continue to be inadequate resources for housing and supportive services.²³⁰

Personal Credit Issues Affecting Housing

As noted earlier, the State of Texas is experiencing a shortage of affordable housing. For instance, 81 percent of all State of Texas Consolidated Plan²³¹ survey respondents indicated that their community's need for affordable housing is outpacing the supply. According to the needs- assessment of the state of Texas Consolidated Plan, an estimated 1,910,683 households in Texas will be in need of housing assistance in the year 2000.

One cannot discuss the need for affordable housing without a cursory look at the issue of personal credit. Personal credit and income management are key to assisting low and moderate income families in getting into housing and maintaining them once they are there. Despite a strong economy, bankruptcy filings increased statewide last year- rising by more than 20 percent in the 67 county U.S. Bankruptcy Court district that includes Travis and surrounding counties. We look at this area because of its robust economy and low relative low unemployment when compared to other parts of Texas. A general increase in population was partly to blame for the rise, but so were increasing amounts of credit card debt.

Personal credit and income management are key to assisting low- and moderate- income families obtain housing and maintain them once they are there.

Much attention is being lavished on this recent rise in consumer debt levels, and in fact, household debt of all types has increased rapidly throughout the 1990s. For example, mortgage debt has grown more than 50 percent since the beginning of the decade (to 3.75 trillion by the first quarter of 1996), while revolving credit has increased an incredible 127 percent (to \$456 billion by September).²³²

Perhaps more troubling, however, is that the ratio of consumer debt to personal income has risen dramatically over the last several years, from a low of 14.10 percent in December 1992 to a high of 18.11 percent last July. High ratios of debt to personal income can foreshadow future defaults. The rate of credit card delinquencies, although highly volatile, typically follows the debt-to-income ratio with a lag. Considering that we have yet to see a decrease in this ratio, we may reasonably expect the consumer delinquency rate to continue rising in the near future. Despite these indicators, it may be premature to raise the alarm for overburdened households. Because interest rates, particularly for mortgages and home equity loans, are at historically low levels, households can manage higher debt levels at any given income.²³³

²³⁰ Siddons, supra note 227.

²³¹ Texas Department of Housing and Community Affairs, "Survey of Needs/State Plan," (1998).

²³² Federal Reserve Bank of Dallas (internet site), <http://dallasfed.org/econdata/econdata.html>.

²³³ Id.

The typical view is that housing counseling agencies help homeowners facing financial problems keep their homes, but more of these agencies' efforts are also helping people become first-time homeowners.

Financial problems aren't necessarily the result of poor money management. Sometimes situations beyond our control- such as divorce, death of a spouse, health problems or a change in household income-can lead to financial hardship. Regardless of the cause, financial worries impact both work and family life.

Foreclosures, delinquencies and evictions are stressful for families. Consumer counseling services reduce this stress through money management programs and individual counseling.

Trained counselors can provide a thorough analysis of income, expense and overall financial situation. Counselors can assist in negotiating with Mortgage Lenders to bring house payments up to date.

While the typical view is that housing counseling agencies help homeowners facing financial problems hang onto their homes, more of these agencies' efforts are also helping first-time purchasers. Pre-purchase counseling accounts for about 75 percent of the most counseling agencies' work while default counseling accounts for the remaining 25 percent.

Pre-purchase counseling takes many forms. There are workshops that educate potential homeowners regarding the work involved in buying and maintain a home. For example, Do they know that they may be faced with fixing a hot water heater, or un-clogging a drain or repairing gutters? And do they know about the costs of those repairs?

Default counseling, meanwhile, is as varied as the individual reasons for counseling which can range from loss of a job to divorce or death. Housing counseling providers also see a certain number of families who probably should not have entered home ownership at the particular time of their lives they did. These individuals usually go into foreclosure within 18 months after buying their home.

With default counseling programs, agencies work as a mediator with a lender, setting up payment plans that allow a homeowner to catch up with missing mortgage payments. Housing counselors are often able to get the lender to back off if there is hope for the homeowner on the horizon. Typically, counselors can will work out a forbearance agreement between the homeowner and lender, in which the lender allows the homeowner to make lower payments or no payments for several months. Budget management counseling is also usually provided so that the homeowner can avoid facing future defaults.

To help a homeowner get into a house or hang onto their present homes, housing counselors' work with both private and public agencies such as local lenders, FannieMae (a privately-owned corporation that buys and sells mortgages), and government agencies such as HUD. These agencies may charge consumers fees for select services, but they also receive funding from a variety of other sources, including government sources (HUD) and the private sector. The state legislature should consider directing TDHCA to increase the availability of credit counseling services for low and moderate income families for the purposes of increasing home ownership and home ownership retention.

The recent passage of home equity lending in the State of Texas, coupled with a projected increase in bankruptcies in the state, mean the State's investment in efforts to meet the housing needs of its low and moderate income populations would be well-served by a complementary efforts in the area of credit counseling for these same population groups.

Federal Devolution - Housing and Community Development Programs

Numerous proposals to eliminate many federally-controlled programs were introduced and debated during by 105th Congress. The Clinton Administration and Congress worked together to maintain or increase funding levels for many of the existing HUD programs. What was actually accomplished included:

- Section 8 program restructuring. Major elements included revisions to contracts on Federal Housing Authority insured properties receiving above-market rent and the process for renewing public housing contracts with the aim of reducing the federal government's cost and preserving the housing stock;
- Public housing reforms. Redirects responsibilities to the states by creating two block grants - one for operations and one for capital funding. Creating self-sufficiency, and improving the management of troubled local housing agencies;
- Homeless Program Reform. Consolidate the seven Stewart B. McKinney homeless programs for housing assistance into a block grant program that would be administered by the states and localities.

Several federally-funded programs are vital to meeting Texas housing concerns both in rural and urban communities. The key programs which assist Texas communities across the State in housing rehabilitation and infrastructure development include: Community Development Block Grant (CDBG) funding and HOME funding. Texas received \$87 million in CDBG funding and \$89 million in HOME funding in FY 1998.

The Texas Office of State-Federal Relations identified the following key areas that should continue to be of keen interest to Texas Policy makers as devolution at the federal level continues to occur in the area of housing and community development.²³⁴



Chart 4: (Source: Steve H. Murdock, Department of Rural Sociology, Texas A&M University)

²³⁴ Report by the Texas Office of Federal State Relations 1998

Section 8 housing restructuring

Texas has the third-largest number of public housing units in the US. In 1997, there was only a small amount of HUD-insured developments that actually needed restructuring. Although the state monitors Section 8 developments closely, the majority of federal funding is directed to the public housing authorities across Texas. If and when this program is block granted, the State's role in this program would change substantially.

Colonias

Texas affordable housing needs are affected by its proximity to Mexico and concentrated areas of poverty and blighted living conditions. Of continued concern to Texas policy makers is the federal funding for redevelopment of infrastructure and housing in these unique areas. In colonias, depicted as predominantly low-income and unincorporated communities conditions are such that basic housing, health, and sanitation facilities are non-existent. Federal devolution would imply that the State would control the distribution of federal funding for initiatives targeted to ameliorating these conditions.

Private Activity Bonds

Current efforts to raise the private activity bond authority from \$50 to \$75 per capital is being pursued by congressional action. This would impact Texas by an increase in authority from the current \$965.4 million to \$1.4 billion. Currently, the Texas State Bond Review Board determines how this authority is allocated to various areas of efforts including; single-family housing, multi-family affordable renting management, student loans, and industrial development bonds. Increasing private activity bonding authority would permit Texas to increase the availability of mortgage revenue bonds to meet Texas growing housing needs.

Low Income Housing Tax Credit (LIHTC)

These federal tax credit allocation program is one of the primary tools available for the State of Texas to leverage private sector investments in multi-family affordable housing developments. Congressional efforts in this area would increase the current allocation from \$1.25 to \$ 1.75 per capita.

Small Business and the Texas Economy

Small business has long enjoyed a favorable spot in the public imagination. It is often portrayed as the engine of economic growth in the U.S. economy and extolled as the source of economic virtues such as job growth, entrepreneurship, innovation, cost reduction, and flexibility. This favorable image has brought considerable rewards in terms of public policy, and laws are often written to partially or fully exempt small firms from oversight and regulation. Small business organizations in Texas have supported NAFTA since its inception and have continued to support full implementation of its provisions.

Texas has worked to provide a favorable climate for business. An evaluation of the impact of NAFTA requires an insight into the status of Texas's small business over the years since the implementation of the agreement. In order to get this insight, the Senate Interim Committee on NAFTA implemented a series of "Small Business Town Meetings" in San Antonio and Corpus Christi. These community wide meetings yielded numerous concerns and suggestions related to the needs of small business desiring to enter into and/or increase activities in international trade opportunities resulting from the NAFTA.

Two recent studies provide fresh insight into the impact of small business.²³⁵ These studies note that whatever the other economic merits of small firms, they generate about as many jobs for their size as do larger firms, but their employees are often worse off than workers in larger concerns, which tend to pay more and provide better benefits. This large-firm advantage is shared across all types of workers, industries, and countries, and it has persisted for more than a century.

Assessing the Needs of Small Business in a Global Economy

The following was a typical comment made by participants in the NAFTA Committee's small business roundtable meetings held this summer:

Small businesses lack very basic information about the international marketplace and how they can play a part in it.²³⁶ When this lack of information is coupled with limited-- and in some cases non-existent-- aid with hands-on technical assistance on issues like customs paperwork, many small business people are kept from venturing and even expanding their efforts into international trade.²³⁷

One of the needs identified by small business testimony was the desire to have reestablish foreign offices, which were shut down several years ago by the Legislature due to mismanagement and the high cost of maintaining the foreign offices. Small business identified the need for these foreign offices for three reasons: (1) the continued internationalization of business, especially in light of NAFTA; (2) the need to expand service or product delivery base beyond American borders in order to keep up with their larger competitors; and (3) small businesses individually do not have the resources to establish or research an international client base.

Small business testimony revealed a belief that there is a middle ground that will suit everyone; namely, funding several fellowship programs that will place one graduate of a masters or doctoral program (law, business, international relations, etc.) per selected foreign country. Each international business development fellow must qualify for Texas residency, and would work in conjunction with the United States Department of Commerce offices or the UT or A&M University exchange program offices abroad. The fellowships should last approximately 15-16 months, with a 3 to 4 month overlapping period to maintain continuity of contacts in each country ("passing the torch," as it were).

The fellow would be the primary contact for Texas businesses wishing to expand their business to that country and promoting Texas as a location for foreign companies. The International Fellow would report weekly to the Office of Trade and International Relations at the Texas Department of Economic Development. They would also provide quarterly written reports to the Board of the TDED

²³⁵ Dale Belman and Erica L. Groshen, "Is Small Beautiful for Workers?" (1997) and David W. Stevens and Julia Lane, "Small Business Employment Dynamics Revisited," (1997). Both articles can be found at www.sba.gov.

²³⁶ Written comments provided by Mr. Rudy Ortiz, Director of the Small Business Development Center in Corpus Christi, in reference to the Senate Interim Housing Committee hearing held in Corpus Christi, Texas on May 27, 1998.

²³⁷ Id.

summarizing their activities (such as what they have done to promote Texas, how many businesses they contacted or fielded calls from, etc.).

International Trade Assistance

There was a wide range of concerns raised by individual business owners and business advocates during the Committee's business roundtable discussions. One of the most recurring issues discussed by participants was the lack of local infrastructure in many communities to help businesses find partners abroad with which to do business. A key recommendation arising from these meetings included that the State Legislature should consider increased funding to the Small Business Development Centers to retain international trade specialist personnel.

Additional funding directed to the existing network of Small Business Development Centers would be specifically used to hire additional qualified staff to provide the International Business services. These services would assist local businessmen and women in identifying international market opportunities, developing international market contacts, securing financing for international transactions, and in providing assistance in the preparation and submission of customs and other agency documentation for export. Funding local community supported efforts would assure that State funding is leveraged and that services are provided on a local basis making them more accessible and accountable to local small businessmen and women. International commerce and relationships are powerful tools for economic development. It was suggested that the State Legislature consider directing the Small Business Development Centers to initiate and maintain contact with recipients of Small Business Administration Loans in their areas.

Access to Capital

Another key area of concern voiced by representatives of the small business community attending the Committee's roundtable discussion was that of accessibility to capital for international trade efforts and small business development. Several recommendations were made by individuals and organizations - such as the West Side Chamber of Commerce of San Antonio.²³⁸

The issue of capital availability for small business is not new, appearing as recently as 1996, when it was listed as the top issue in the last Governor's Conference on Small Business.²³⁹ The issue also arose during a 1997 Capital Access Forum sponsored by a concerned group of Texans, which discussed the need to increase the flow of capital (debt and equity) into small- and medium-sized businesses.²⁴⁰ Key deficiencies in capital access were identified, including:

- a lack of standardized, and therefore predictable, processes and processing;
- a lack of adequate, efficient, and effective means of matching debt, equity, and capital suppliers at multiple points along the food chain;

²³⁸ Written comments provided by Mr. Jimmy J. Casiano, President of the West San Antonio Chamber of Commerce, in following up to the Senate Interim NAFTA Committee small business roundtable held April 14, 1998 in San Antonio, Texas.

²³⁹ Governor's Conference on Small Business, Final Report, May 16 and 17, 1996.

²⁴⁰ 1997 Texas Capital Access Forum, held at the Doubletree Hotel, Austin, Texas Nov.30 - Dec 2, 1997.

- a lack of understanding of the “market for funding by those seeking funds, providing funds, or training either parties;”
- the complexity and difficulty of initial (IPO) and/or direct (DPO) public offerings;
- the marginal use or lack of use of public pension, insurance and other state fund monies for debt or equity investments;
- a lack of early stage venture capital investment clubs.

One specific recommendation relating to the issue of capital arising from these small business roundtable discussions included a suggestion that the State Legislature consider the creation of a capital fund to loan or grant to local community development corporations.

Currently, there is no law providing for multi-bank community development corporations to invest in or loan funds to businesses that employ low- and moderate-income persons located in distressed areas. The development of a state capital fund to relend or grant to local communities which have initiated either multi-bank development corporations and/or community development corporations under Federal Reserve guidelines would increase the availability of capital to very small and moderately sized business across the state.

Other states-- California, New Mexico, South Carolina and Massachusetts-- have successfully created this type of capital access fund, which in turn contributed to the success of many small businesses. During the 75th Legislative Session, Senate Bill 1877 by Senator Royce West would have created a Texas community investment program to assist certain businesses in distressed areas of the state through multi-bank community development corporations which would invest in or loan funds to businesses that employ low- and moderate-income persons located in distressed areas. Although this bill was vetoed by the Governor, it had the full support of the Texas Bankers Association and passed both the Senate and House.

Building Local Capacity to Support Small Business

Another ongoing effort to identify small business needs and opportunities through NAFTA is a statewide assessment of small business needs implemented by the Texas Higher Education Coordinating Board. Senate Bill 1040, authored by Senator Carlos F. Truan, directed the Higher Education Coordination Board to conduct a study of small business assistance and the role of Texas higher education institutions. The Board selected the University of Texas at Arlington to coordinate among several universities across Texas a query of small business needs as related to NAFTA and international trade. While this study is in its final stages, preliminary results indicate that the issue of capital availability and international trade assistance are still key needs.

In order to meet these needs, the State of Texas should continue to support policies and programs at the state and local levels to leverage federal NAFTA-related resources. One such federal program targeting both communities and small business is the Community Adjustment and Investment Program (“CAIP”). The CAIP is a loan program created by the United States Government as a component of the North American Development Bank (“NADBank”) for communities which need assistance adjusting to trade impacts of NAFTA, where those impacts have resulted in the loss of jobs. Loans in which the CAIP takes a role must result in the creation of private sector jobs in affected communities. The CAIP was created in connection with the passage of NAFTA to provide credit to new or expanded businesses in communities with significant job losses due to changes in trade patterns with Canada and Mexico. Congress initiated the program to help those communities in need of adjustment assistance. U.S.

Funding through the program will be made available for commercial projects that create new private sector jobs. The goals of the CAIP are to:

- assist private companies in creating or retaining job opportunities in trade affected areas;
- leverage private sector business lending; and
- focus resources on the most significantly-affected areas.

CAIP financing relies on two methods. The first uses existing U.S. government loan or loan guarantee programs administered by participating federal agencies (either the Small Business Administration (SBA) or the U.S. Department of Agriculture), directing any funds received from the NADBank to budget subsidies and certain administrative costs. In rural communities, CAIP works with the Business and Industry Loan Program within the United State Department of Agriculture (USDA), one of the many programs and services available from the USDA. In all areas eligible for the CAIP, the NADBank also works very closely with the SBA, which has several additional programs to assist businesses with problems such as credit and technical assistance.

The second method utilizes financing by the Los Angeles Office of NADBank (the "direct financing program"). CAIP can also provide direct financing where conventional sources are not available.

CAIP also operates as a "development catalyst," assisting where capital availability falls short in commercial lending markets for start-up or expansion efforts. The CAIP will combine the efforts of the NADBank with certain federal agencies, local financial institutions and financial intermediaries to meet financing needs for business opportunities.

In light of the funding opportunities of this particular federal program, it was suggested that it the State of Texas and its communities should:

- seek designation as impacted communities, especially those Texas border communities not currently classified as such; and
- amend and/or modify state small business financing programs in order for them to complement CAIP funding efforts, especially in NAFTA high impact communities along the border.

International Trade Resources

Office of Trade and International Relations (OTIR)

The Office of Trade and International Relations (OTIR) helps Texas companies expand their business worldwide. By providing a forum for international business exchange through international trade missions, trade shows, seminars and in-bound buyers missions, OTIR gives Texas companies the opportunity to promote their products and services to international buyers and partners. OTIR also helps to connect companies with counseling and training available through the International Small Business Development Centers and works with entities such as the U.S. Department of Commerce, the Japan External Trade Organization, the Texas consular corps and its counterparts in the Mexican border states to ensure that Texas business interests are represented abroad. The State of Texas office in Mexico City is an especially invaluable resource for facilitating business between Texas and Mexico.

Trade Missions and Trade Shows

Texas companies that participate in government-led and organized trade missions and trade shows under the "TEXAS" banner enjoy increased visibility and name recognition in the international marketplace. The OTIR organizes a number of trade missions and participates in many international trade shows. Trade specialists for Latin America, Asia-Pacific and Europe/Middle East/Africa target the best prospects for export growth in each region and select trade promotion events that will maximize the exposure of Texas businesses.

Export Counseling

Basic and advanced export counseling is provided by Texas' network of international Small Business Development Centers (SBDCs) in conjunction with the OTIR. In addition, many chambers of commerce throughout the state organize international trade-related seminars for their members. Companies considering an expansion into the exporting business or firms ready to export but in need of specific assistance in the areas of customs, permitting, financing or market analysis are encouraged to contact the international SBDCs for international resource referrals, preliminary counseling, trade leads and workshops. The four international SBDCs located in Texas are:

- University of Texas at San Antonio- International Trade Center, 210-458-2470
- University of Houston- International Trade Center, 713-752-8404
- Northwest Texas SBDC in Lubbock 806-745-3973
- North Texas International Business Center in Dallas 214-747-1300

Partnerships

The OTIR has cooperative agreements with the U.S. Department of Commerce International Trade Administration and the Japan External Trade Organization to assist Texas exporters, with staff from both organizations located at various sites across Texas. OTIR also works with the numerous consulates and international business associations in Texas and other parts of the U.S. to maximize exposure for Texas products and services.

Trade Lead Distribution

International trade leads are gathered through trade events, company requests, JETRO, USDOC and other sources. OTIR's trade lead coordinator researches the leads, identifies potential Texas suppliers and relays the information to the requester. Trade leads from the U.S. Department of Commerce's Trade Opportunity Program (TOP) are available to Texas businesses electronically via the U.S. Government's business and economic information Internet site, STAT-USA at: <http://www.stat-usa.gov/>. This is a subscription service available through many public and university libraries. Other buy/sell business postings as well as other valuable business information can be accessed at no charge through the Texas Marketplace at: <http://www.texas-one.org/>.

Texas International Center

An innovative initiative at the Texas Department of Economic Development ("TDED") is the establishment of the Texas International Center. The Center invites accredited economic development, trade and tourism representatives from foreign countries to work in the Center for up to three months. These representatives work toward expanding business ties between Texas and the representatives' home countries. The objectives of this project are to locate Texas suppliers for international trade inquiries and projects; identify Texas companies for joint ventures; develop country-specific trade,

tourism, and investment programs in cooperation with OTIR; and educate Texas companies on doing business in participating countries.²⁴¹

Research Publications

There is a wide range of economic research publications. For instance, the "Texas in the Global Economy" project, launched by TDED in 1993-94, is an ongoing series of strategic industry studies which critically analyze the position of Texas manufacturers from a global perspective. Texas is believed to be one of the first states to begin analyzing its strategic industries in a global context, and the "Texas Global Economy" project has received praise from communities in Texas and businesses around the world. TDED researchers have also completed a comprehensive study of foreign direct investment and a detailed analysis of Texas manufacturing plants that export.

Other publications which are published periodically include: an annual listing of new and expanded plants; a directory of the largest companies in the state; a directory of multinational companies; an annual report on reinvestment zones and tax abatement activity; a state comparison report; and a reference guide for Texas economic developers.

Southwest Trade Adjustment Assistance Center

The Southwest Trade Adjustment Assistance Center ("TAAC") in San Antonio is a component program of NAFTA established to provide assistance to those businesses in a three-state regional area (including Texas, Oklahoma and Louisiana) adversely affected by the trade agreement in the U.S. The TAAC serves U.S. manufacturing firms hurt by import competition regain profitable growth by first documenting technical needs, and then planning, implementing and paying for the highest-quality technical assistance available--up to 50 percent of the cost of technical assistance, and up to 75 percent for some smaller firms. While the TAAC provides no direct financial assistance (i.e., loans or grants), the diagnostic analysis and assistance plan have often been used successfully to secure financing through commercial lending institutions and governmental agencies such as the SBA. TAAC has served companies in Dallas, Houston, San Antonio, Sherman, Tyler, Conroe, Waco, Boerne, and Baytown.

The TAAC also helps secure consulting services tailored to the individual company's needs, such as: pricing analysis, production cost analysis, overhead cost analysis, product quality assessments, product feature enhancement reviews, distribution methods analysis, after-sales service assessments, new product assessment and development analysis, new market analysis and long range operational goal and strategy planning.

In Texas the TAAC has served companies located in Houston, Dallas, San Antonio, Waco, Baytown, Grand Prairie, El Paso, Tyler, Sherman and other smaller communities. Since 1990 the TAAC has invested a little over \$1,474,321 of federal funds (in technical consulting services) directly to these same businesses. These businesses have in turn invested \$938,321 of their own capital for a combined total of \$2,412,827 toward re-establishing these companies as competitors in the international marketplace. Over 30 individual firms in Texas have benefitted from TAAC services. These same firms employ in excess of 2300 employees in Texas.

²⁴¹ For more information on the Texas International Center, contact Ms. Margo Dover, Director of the Texas International Center at 512/936-0250 (phone) or 512/936-0445 (fax).

Charge IV: Statewide Strategic Response to NAFTA

The NAFTA Committee and the Comptroller of Public Accounts both assessed the effects of NAFTA on Texas, and came to the same conclusion. On average, NAFTA has been good for Texas, but it should be noted that one can drown in a lake that averages only an inch deep. The border is drowning. It has incurred costs that exceed the benefits, and the population is ill-equipped to take advantage of the jobs and opportunities that the rest of the state is enjoying. Long-standing inequities in state funding have left the border with a legacy of inadequate institutions and infrastructure to meet the challenges of NAFTA or other fundamental economic changes.

In addition to the extraordinary stresses on the border, the infrastructure of the entire state is being challenged. Failure to anticipate the growth in demand for freight transportation probably contributed to the disastrous log jamb of the rail system following the merger of the Union Pacific Railroad with the Southern Pacific. Texas businesses lost at least \$1.4 billion in 1997 alone.²⁴² Furthermore, pressure on the highway system is forcing accelerated construction of alternative routes such as State Highway 130 in Central Texas. Current problems in the Asian markets may result in greater reliance on hemispheric trade and production, further straining Texas' infrastructure. In any event, the pressures are not likely to abate.²⁴³

The findings and recommendations that follow from the first three charges to the NAFTA Committee comprise a measured response to the effects of NAFTA to the extent that those effects can be isolated from general economic changes. The Committee received testimony on an extremely broad range of issues that shared few common denominators. Perhaps the most encouraging observation over the Committee's months of hearings was that communities of every type were actively engaged in solving the problems they had identified. The recommendations in this report are made in support of those efforts. However, these recommendations are tactics which deal with details. They are neither comprehensive nor strategic.

Texas needs a responsive strategy rather than a rigid strategic plan. The globalization of trade will continue to challenge Texas for better or worse. It is clear from the increasing rate of change over the last 30 years that the primary characteristic of future trade and industrialization will be constant change. No strategic plan will serve Texas unless it is constantly flexible. Because state agency lines and responsibilities are relatively static, the only entities capable of mounting a responsible strategy are the Legislature and the Governor. Due regard for political reality and human nature argues that both of these branches of government should be responsible for Texas' response to globalization. The separation of powers doctrine prevents the Legislature from dictating the Governor's response. Therefore, the Committee recommendation only extends to actions that may be taken by the Legislature; namely, that the **Texas Senate, in conjunction with the House, should establish a joint standing committee on strategies to address the future impact of NAFTA on Texas.**

The NAFTA Committee recommends further that the first task of such a standing committee should be to refine our understanding of what constitutes an effective response to economic change and the factors

²⁴² Bernard L. Weinstein and Terry L Clower, supra note 111.

²⁴³ Ray Perryman, "Texas growing trade center," Wichita Falls Times, August 30, 1998.

that will produce the greatest long-term economic benefits to the state's citizens. An economy has as many parts as society itself, and the committee's efforts might easily lose focus without a considered effort to limit its scope.

The table that follows includes only the Committee recommendations that pertain to infrastructure, broadly defined as *material, institutions, or processes*, and divides them into two categories. The first category is *short term investments*- generally, infrastructure or other items that require an infusion of initial capitalization (funds). The second category is *long-term investments*- generally, changes in funding formulas, decision processes, or institutions which will either put the border on par with the rest of the state, or will establish or foster institutions that are needed there. The recommendations are divided further into unspecialized groups such as infrastructure, education, and "other key areas." Areas addressed within these groups include: transportation, water supply, public and higher education, workforce development, health, and small business development.

Table 5: Border Investment Initiatives

	SHORT-TERM INVESTMENTS One-time funding or investment	LONG-TERM INVESTMENTS Changes in formulas, processes, or institutions
Border Infrastructure		
Transportation	For the FY99-2000 biennium, fund TxDOT to address the NAFTA transportation infrastructure needs of the three border transportation districts (Pharr, Laredo, and El Paso).	Adopt a Texas Rail Policy consistent with Article 10, Section 2 of the Texas Constitution, to ensure that the majority of rail-dependent shippers in Texas have access to a competitive railroad freight market.
	Fund, and require TxDOT to develop an integrated, intermodal transportation <u>plan</u> for the State, and to present the plan to the 77th Legislature, and all Legislatures thereafter.	Fund, and require TxDOT to develop, an integrated, intermodal statewide transportation <u>model</u> for the State of Texas for use in ongoing transportation planning.
	Direct TxDOT to promptly deploy new technology to expedite traffic at border crossings.	Direct TxDOT to revise its funding formulas to address the damage done by NAFTA truck traffic.
	Establish dedicated commuter lanes (DCLs) at border crossings to facilitate the transportation of binational commuters who cross the border for employment purposes.	Establish an interagency border transportation consortium to coordinate institutional planning and technological improvements at the Texas-Mexico border, working toward a “seamless border crossing” concept with other border states.
	Fund automation for all local EMS, fire and police departments to facilitate roadside safety inspection; assess the safety status of commercial vehicles, drivers and cargo; and provide information to emergency response systems, first responders, border inspectors, DPS, etc.	Direct all state agencies to implement a telework program for their employees
Water/Environment	Fund international wastewater treatment plants, built on Texas side, to meet state permit requirements, for all major sources of pollution affecting the quality of water available to Texas.	Clarify authority of local governments (SB 1,75th) to construct facilities outside the state and permit international interlocal agreements for any public purpose including <u>joint</u> water treatment, waste management, etc. to.

Table 5: Border Investment Initiatives

	SHORT-TERM INVESTMENTS One-time funding or investment	LONG-TERM INVESTMENTS Changes in formulas, processes, or institutions
	Direct and fund TNRCC to develop a <u>water availability model</u> for the Rio Grande as the agency is doing for all other rivers in the State, and direct TNRCC to include the firm yield of groundwater in the model.	Fund a position at the Texas Water Development Board for border and international water issues and to develop a <u>water supply model</u> for the Rio Grande including adjacent groundwater.
	Direct and fund TWDB to initiate and construct a cross-border water project under the terms of SB 1 (75th) to test the ability of Texas to invest in water projects in Mexico, and recommend corrections to the 77th Legislature.	Require the Texas Higher Education Coordinating to Board to fund research on border environmental and natural resource issues from the Advanced Research and Advanced Technology funds.
	Direct TWDB and the TNRCC to coordinate in developing a complete water supply model for the Rio Grande including the geohydrology of the basin.	
EDUCATION		
Public Education		Establish formula incentives for ISDs to increase the number of certified bilingual and ESL teachers.
		Supplement the existing Instructional Facilities Allotment (IFA) program, which helps ISDs repay bond debt.
Workforce Development	Establish Texas State Technical College (TSTC) in El Paso similar to the facilities at TSTC campuses in Waco, Harlingen and Sweetwater.	Change the application procedure for <i>Smart Jobs</i> funds to consider relative regional needs, e.g., unemployment rate, poverty rate.
	Provide adult literacy grants to public libraries: \$5 - \$10 million.	Require the Texas Workforce Commission to establish performance measures to evaluate the effectiveness of the Trade Adjustment Assistance and NAFTA/Transitional Adjustment Assistance programs.
		Fund adult literacy programs as a formula under state share of public school finance

Table 5: Border Investment Initiatives

	SHORT-TERM INVESTMENTS One-time funding or investment	LONG-TERM INVESTMENTS Changes in formulas, processes, or institutions
Higher Education	Continue line-item funding for university programs related to international trade in NAFTA high-growth areas of the state that have been traditionally underfunded.	
Business Development/Job Creation	Create a capital fund for loans or grants to local community development corporations.	Require all tax abatements and tax incentives for businesses to be conditioned on creation of living-wage jobs.
		Fund foreign office representation and services through Texas Department of Economic Development fellowships for postgraduate students.
OTHER KEY AREAS:		
Affordable Housing	Appropriate funds to provide lending “libraries” for tools and do-it-yourself literature for home construction at the colonias self-help centers.	Increase the number of colonia self-help housing centers and increase funding for the 5 existing centers.
	Fund the Texas Housing Trust Fund, \$20 - \$40 million.	Establish independent management for Texas Affordable Housing Corporation.
Colonias		Give the Texas Water Development Board (TWDB) broad authority to initiate a colonias project where it finds no willing local sponsor or no local sponsor that has the managerial, financial or technical capacity to build and operate a system.
		Require TNRCC and the TWDB to determine whether a service provider has the managerial, financial and technical capacity to operate a water utility, give the TWDB the authority to withhold EDAP funds from providers that fail to meet minimum standards until the provider comes into compliance, and give authority for TWDB to find a suitable operator is the current operator cannot comply.

Table 5: Border Investment Initiatives

	SHORT-TERM INVESTMENTS One-time funding or investment	LONG-TERM INVESTMENTS Changes in formulas, processes, or institutions
		Direct TNRCC to expeditiously resolve conflicts between local service providers over who has the right to serve an area that is eligible for EDAP funding, and to give preference to the provider who has the highest rating of managerial, financial and technical (MFT) capacity, and should further direct TNRCC to give first priority to resolution of service provider conflicts requested by the TWDB.
		Authorize TNRCC, in consultation with the TWDB, to prohibit an operator of a water utility that receives EDAP funding from using water utility revenues for non-utility purposes when diversion of funds compromises the integrity of the system.
Health	Replace South Texas Hospital with a new structure.	Direct TDH to encourage promotora services as an integral part of publicly-funded health insurance programs along the border.
	Create a Border Health Institute to focus on infectious disease, Hispanic health, and environmental health.	Increase funding for border health programs and facilities until such programs can become self-sufficient.

Appendix A: Summary of Committee Hearings

The Senate Committee on the North American Free Trade Agreement, or NAFTA, held one (1) organizational hearing, and six (6) public hearings during the interim. The public hearings were held in Corpus Christi, Dallas, El Paso, Houston, Mission, and San Antonio pursuant to the charges directed to the NAFTA Committee by Lt. Governor Bob Bullock. A total of 363 witnesses/participants attended the NAFTA hearings.

Location	Senators in Attendance	Number of Witnesses Testifying	Number of additional Participants
Houston	Truan, Carona, Gallegos, Ogden, Shapleigh	35	26
El Paso	Truan, Carona, Gallegos, Ogden, Shapleigh	46	62
Dallas	Truan, Carona, Ogden, Shapleigh	20	21
Mission	Truan, Gallegos, Ogden, Shapleigh	39	9
Corpus Christi	Truan, Carona, Shapleigh	28	29
San Antonio	Truan, Carona, Gallegos, Ogden, Shapleigh	25	23

Houston - October 13th 1997

The first hearing in the City of Houston served as the NAFTA Committee's organizational meeting and we also concentrated on railroad service problems.

For Texas shippers, the increase in NAFTA trade and the service problems that resulted from last year's railroad merger combined to create a crisis that puts Texas businesses at a competitive disadvantage. The rail problems experienced after the Union Pacific merger have created an economic loss of at least \$762 million for Texas at the time of this hearing, according to Dr. Bernard Weinstein of the Center for Economic Development and Research at the University of North Texas in Denton.

All evidence indicates that our transportation system is fast approaching its limits. In some markets neither the highway nor the rail system can meet the needs of Texas businesses. Since

1990, Texas exports to Mexico have risen almost 107percent, while exports to Canada have risen 119percent. About 80percent of Mexico's trade with the United States and Canada passes through Texas, and 75percent of that amount travels the I-35 corridor.

The rail system is at gridlock in Houston, Fort Worth, El Paso, and Corpus Christi. The highways and trucking companies cannot take up the slack. The life cycle of the highways is being reduced while resources for repair dwindle. The Committee is working with the Texas Railroad Commission and the Texas Department of Transportation to develop a comprehensive railroad policy for the State of Texas that will integrate rails with highways for moving freight.

El Paso - November 13, 1997

Focusing on NAFTA's impact on Texas' labor force on the border, the second hearing held in El Paso was especially timely given the announcement by Levi Strauss that it would close three plants in Texas, including one in El Paso. The Committee heard testimony concerning NAFTA's general impact on the El Paso economy including health and human services, transportation, education, and the environment. The lasting impression was that although Texas as a whole is booming under NAFTA, El Paso had suffered plant closings resulting in job losses and an adverse economic impact.

Comptroller John Sharp reports that if the Texas border area was a separate state, it would be the poorest. The U.S. Department of Labor reports that almost 7,000 jobs have been lost in El Paso since 1994, the first year of NAFTA.

The Texas border is also experiencing serious infrastructure damage because of the increased highway traffic load due to NAFTA. State transportation funding has not been adequate to meet the region's growing needs.

Irving, Texas December 10, 1997

NAFTA's impact on Texas small business was the focus of the North Texas hearing held in Irving, Texas. Indications are that the Dallas/ Fort Worth Metroplex has benefitted the most in Texas from NAFTA.

According to the U.S. Small Business Administration, 98.9 percent of Texas businesses with one or more employees are small businesses. In addition, there were 691,000 full time, self-employed persons in Texas in 1995. Businesses with less than 20 employees represent the biggest growth sector in our commercial landscape. New small businesses are concentrated in Dallas/Fort Worth, Houston, and the Central Texas Corridor.

Mission Texas - January 14, 1998

The ambiguous results of NAFTA were again obvious at our hearing in the Rio Grande Valley in the City of Mission, Texas.

The Committee heard that while many think of NAFTA only in terms of jobs gained or lost, the effects will soon be much more widespread, ranging from the way schoolchildren are taught to how trucks are inspected at border crossings. The City of McAllen was recently named in Forbes Magazine as the ninth fastest growing area in the nation with a 24 percent increase in jobs during the past five years. Nevertheless, we also heard stories of personal tragedy, of lifetime jobs being eliminated and families left without the means to support themselves. Public testimony also indicated that downtown businesses were suffering from the \$50 limit on goods purchased in the United States that was imposed by the Mexican Government.

Private sector representatives said that companies are having a tough time finding qualified employees for newly-created technical and managerial positions. That was echoed by Rio Grande Valley officials who say their part of the state has been shortchanged when it comes to job training programs. All are critical issues, not only for the Rio Grande Valley, but all of Texas, as the free trade agreement continues to reshape the state and national economy.

The state's minority population, particularly among Hispanics, is booming. Four of the state's five fastest growing cities are on the Mexican border. If this population is not well-educated, the state's economy may be derailed by a low skilled work force. The quality of the Texas workforce rests on funding for training, re-training and education programs in South Texas and the border region.

Environmental concerns, including the proposal to designate the Rio Grande as an American Heritage River were also addressed.

Corpus Christi - Feb. 10, 1998

The focus of the Corpus Christi hearing was the impact of NAFTA on Texas' land and water ports and their need to adapt to the increased flow of international shipments.

The Committee received testimony concerning the need and proposals to connect Corpus Christi, Texas' deepest port, and Laredo, the largest land port in the entire United States. This relationship will allow both cities and communities in between, to take advantage of the trade flow and the opportunities it would bring. However, as the Port of Corpus Christi continues to rely primarily on liquid cargo (90 percent), it is continuing its work to improve highway accessibility that will increase dry cargo access from the Mexican border and elsewhere.

The Committee also held a Small Business Roundtable NAFTA discussion the day prior to the public hearing to help facilitate the local small business community in identifying issues related to international trade. During the hearing, the Committee heard from many of these same business people concerning how they have taken advantage of trade opportunities as well as their suggestions regarding how the State might assist entrepreneurs in obtaining information on international trade resources, trade leads or access to capital.

San Antonio - Apr. 15, 1998

The final public hearing in San Antonio examined the effects of NAFTA on San Antonio. The Committee heard testimony concerning the the issue of base closures and realignment. Local representatives gave a summary of a small business roundtable that was held the previous day in San Antonio that emphasized the need for greater support for small businesses wishing to become more involved in international trade.

The Committee received additional testimony on international interlocal agreements and the cross-border trucking provisions. Members of the Committee were provided information on the International Trade Data System (“ITDS”), which is an inter-agency initiative to improve the processing of international trade transactions in the United States. Testimony was also heard from the North American Development Bank (“NADBank”) regarding the status of recent projects along the Texas-Mexico border. An official from the Board of the Community Adjustment and Investment Program (CAIP) addressed the Committee on the role of the CAIP and efforts that are underway to assist communities in need.

Appendix B: List of Witnesses Participating in Committee Hearings

Houston- October 13, 1997

NAFTA's Impact on Transportation

On: Canavati, Jorge (Canavati & Associates), Houston
Daniels, Tom (Synergy International), Long Beach, CA
Horan, John (Port of Houston Authority), Houston
LaRue, John (Port of Corpus Christi), Corpus Christi
Lilly, Susan (Texans for Safe Roads), Austin
Moseley, Jeff (I-35 Corridor Coalition), Carrollton

Registering, but not testifying:

On: Campbell, Richard (Kingsley Group), San Francisco, CA
Gonzales, Timothy (Teamsters), Washington DC
Wattles, Dan (Texas Department of Economic Development), Austin

Written materials submitted:

On: Baquet, Stephen (Synergy International), Tucson, AZ
Burr, Kristine (Director General-Canada's Surface Policy), Ottawa, Canada
Cuellar, Bob (Texas Department of Transportation), Austin
DeLay, Randy (South Texas Border Partnership), Houston
Findeisen, Les (Texas Motor Transportation Association), Austin
Giermanski, Jim (Texas A&M International University), Laredo
Goodhope, Sam (Office of the Attorney General), Austin
Harrison, Rob (University of Texas Center for Transportation Research), Austin
Kollaer, Jim (Greater Houston Partnership), Houston
Leal, Gloria (Texas Department of Insurance), Austin
Mills, Lester Maj. (Texas Department of Public Safety), Austin
Reagan, Dan (Federal Highway Administration), Austin
Riojas, John (Teamsters), Washington DC

Rail service

On: Bird, Ron (Commercial Metals Co.), Dallas
Gamble, Teresa (Shrieve Chemical Co.), The Woodlands
Gomez, Eliseo Jr. (Cemex/ U.S.A.), Houston
Heastie, Joe (Union Pacific Railroad), Omaha, NE
Henneke, Gary (Texas Petrochemicals), Houston
Kapusta, George (Am. Chrome & Chemicals), Corpus Christi
Nix, Rudy (Enterprise Products Co.), Houston
Perry, John R. (The Frito Lay Co.), Plano

Rodriguez, Pablo (Formosa Plastics/USA), Livingston, NJ
Watts, Patrick (Texas Mexican Railways), Houston
Wieting, Leroy (Wieting Consulting), Portland

Registering, but not testifying:

On: Jones, David (Reynolds Metals Co.), Corpus Christi
Norman, Gary (Union Pacific Railroad), San Antonio
Olson, Ron (Union Pacific Railroad), Austin

Written materials submitted:

On: Artl, Kevin (AmTrak), Chicago, IL
Evans, Bob (NITLeague), Dallas
Roop, Stephen (Texas A&M University-Transportation Institute), College Station
Schieffelbein, Richard (Port of Houston Authority), Houston
Starzel, Robert (Union Pacific Railroad), San Francisco, CA

El Paso-November 13, 1997

Workforce/NAFTA

Registering, but not testifying:

Against: Rogue, Aurelia (self), El Paso

Economic Development/NAFTA

Registering, but not testifying:

On: Escobar, Bonnie (Greater Chamber of Commerce), El Paso
Thomas, Tom (Greater Chamber of Commerce), El Paso
Wes Jurey (Greater Chamber of Commerce), El Paso

Education/NAFTA

On: Finley, Charlsetta (self), El Paso

Riter, Stephen (University of Texas at El Paso, Department of Academic Affairs), El Paso

Registering, but not testifying:

For: Nevarez, Connie (self), El Paso
On: Ballard, Donna (self), Midland

Written materials submitted:

On: Ramirez, Dr. Raul (El Paso Community College), El Paso

Environment/NAFTA

Written materials submitted:

On: Silva, Peter (Border Environment Cooperation Commission), El Paso
Spurlock, Michael (Water Utility Public Service Board), El Paso
Vickers, Danny (Paso del Norte Informal College), El Paso
Villa, Hector (self), El Paso
Williams-Yellen, Tracy (self), El Paso

Food safety/NAFTA

Registering, but not testifying:

For: Munoz, Trini (Public Citizen Global Trade/Water), El Paso

Health/NAFTA

For: Elliott, Jamie (self), El Paso

Mares, Andy (Adults & Youth United Development Association), El Paso

Written materials submitted:

For: Peterson, Robert (self), El Paso

Solis, Rene (Young Women's Christian Association), El Paso

On: Coleman, Barry (County Pharmacy Association.), El Paso

Deckert, Myrna (self), El Paso

Housing/NAFTA

Written materials submitted:

For: Garcia, Rose (Collaborative Community Economic Development), El Paso

On: Pacillas, Manny (El Paso Housing Authority), El Paso

Job Training/NAFTA

For: Arellano, Hector (Local Union 583/IBEW), El Paso

On: Aldana, Manny (self), El Paso

Edmonson, John (City of El Paso), El Paso

Finley, Charlsetta (self), El Paso

Glenn, Eric (Texas Workforce Commission), Austin

Registering, but not testifying:

For: Avila, Sonia (Center for Employment Training), El Paso

Nevarez, Connie (self), El Paso

On: Elias, Dr. Lois (self), El Paso

Hinde, Father Peter (self), El Paso

Written materials submitted:

For: Nieto, Ana I. (self), El Paso
Romero-Zwezerijnen, Mar (Baker-Darling Training Center), El Paso
On: Arnold, Cindy (La Mujer Obrera), El Paso
Duarte, Emma (self), El Paso
Fernandez, Maria (self), El Paso
Fuller, John (Texas Workforce Commission), Austin
Jones, Larry (Texas Workforce Commission), Austin
McAlmon, George (self), El Paso
Ramirez, Dr. Raul (El Paso Community College), El Paso
Thomas, Tom (Greater Chamber of Commerce), El Paso
Yacono, Joseph (Texas Workforce Commission), Austin

Law Enforcement/NAFTA

For: Ellett, Lt. Jeff (El Paso Police Dept.), El Paso

Written materials submitted:

On: Lizarraga, Marcos (District Attorney's Office), El Paso

NAFTA

On: Holland-Branch, Patricia (Texas Department of Economic Development), El Paso
Martinez, Richard (self), El Paso
Ramirez, Mayor Carlos (City of El Paso), El Paso

Registering, but not testifying:

For: Garcia, Juan (Texas Workforce Commission), Austin
Against: Bowles-Grijalra, Mary (Rio Grande Workers Alliance), El Paso
On: Aguilar III, Carlos (self), El Paso
Corral, Elvia (self), El Paso
Llamas, Louis (self), El Paso
Wattles, Dan (Texas Department of Economic Development), Austin

Written materials submitted:

On: Fero, Kelly (Texas Comptroller's Office), Austin
Fullerton, Dr. Tom (Center for Border Economic Development at the University of Texas at El Paso), El Paso
Michie, Donald (Border Trade Alliance), El Paso
Reyes, Congressman Silvestre (self), El Paso
Teran, Commissioner Miguel (Precinct 3), El Paso

Retail/NAFTA

On: Oxford, Dave (Finished/Unfinished Furniture), El Paso

Registering, but not testifying:

On: Rosen, Sig (Rosen's Store for Men), El Paso

Transp./Infrastructure/NAFTA

On: Cuellar, Robert (Texas Department of Transportation), Austin

Sanchez, Eddie (Texas Department of Transportation), El Paso

Written materials submitted:

On: Vickers, Danny (Paso del Norte Informal College), El Paso

Irving- December 10, 1997

Auto salvage

On: England, David (Texas Industrial Auto Resellers), Austin

NAFTA

On: Fittes, Celine (Canadian Consulate General's Office), Dallas

Registering, but not testifying:

On: Crowley-Martinez, Cindy (Texas Association of Staffing), Dallas

Weaver, Mary (self), Fort Worth

Written materials submitted:

On: Nuno, Denise (Texas Hispanic Business Journal), Dallas

NAFTA & Transportation

On: Moseley, Hon. Jeff (North American SuperHighway Coalition), Denton

Written materials submitted:

For: Weinstein, Dr. Bernard (self), Denton

NAFTA's Impact on Small Business

For: Douglas, Rick (Greater Dallas Chamber of Commerce), Dallas

Hutchison, Robert (self), Dallas

Lopez, Carlos (International Trade Center at the University of Houston), Houston

Martinez, John (Greater Dallas Hispanic Chamber of Commerce), Dallas

Morin, Joe (Texas Association of Mexican-American Chambers of Commerce), Austin

On: Jackson, Kingsley (Copicard Systems, Inc.), Dallas

Pinkus, David (Small Business United/Texas), Austin

Tully, Susan (Texas Department of Economic Development), Austin

Written materials submitted:

For: Garcia, Heber (Freese and Nichols, Inc), Fort Worth
Payton, Dick (Dal-Matic, Inc.), Dallas

On: Kamm, Bob (Texas Association of Business and Chambers of Commerce), Austin
Keleher, T.H. (Chamber of Commerce), Fort Worth
Parker, Karen (U.S. Department of Commerce), Austin
Velasquez, Robert (Southwest Trade Adjustment Assistance Center at the University
of Texas at San Antonio), San Antonio

Mission, Texas- January 14, 1998

\$50 limit

Against: Mansinghani, Suresh (The Gold Factory), McAllen

American Heritage River status

For: Haas, Maurie (Frontera Audubon Society), McAllen
Rubinstein, Carlos (City of Brownsville), Brownsville

On: Fain, Ty (General Land Office), Austin
Nevarez, Dr. Miguel (University of Texas- Pan Am/President), Edinburg

Written materials submitted:

On: Austin, David (Congressman Silvestre Reyes), El Paso

Housing

On: Clark, Jeff (Texas Department of Housing and Community Affairs), Austin
Guzman, Sam (Texas Department of Housing and Community Affairs), Austin
Limon, Jr. Jesus (Proyecto Azteca), San Juan
Saenz, Jose (Texas Department of Housing and Community Affairs), Edinburg

Written materials submitted:

On: Henneberger, John (Texas Low Income Housing Information Service), Austin
Palacios, Juan (Texas Department of Housing and Community Affairs), Austin

Job training/ Dislocated workers

For: Flaar, Father Bart (Valley Interfaith/VIDA), McAllen
Against: Meza, Enedelia (self), Weslaco

On: Crawford, Harry (Texas Workforce Commission), Austin
Garza, Wanda (Valley Initiative for Development & Advancement), Weslaco

Glenn, Eric (Texas Workforce Commission), Austin
Sears, Thomas (South Texas Community College), McAllen

Written materials submitted:

Against: Valdez-Cox, Juanita (United Farmworkers), San Juan
On: Yacono, Joseph (Texas Workforce Commission), Austin

NAFTA & Environment/ Nat. Resources

Written materials submitted:

On: Campbell, Mary Lou (Lower Rio Grande Valley Sierra Club), South Padre Island
Cruz, Sharon M. (Los Caminos del Rio/Texas), Laredo

NAFTA & Health

On: Smith, Dr. Brian (Texas Department of Health/Region 11 Director), Harlingen

Written materials submitted:

On: Casso, Dr. Ramiro (Self), McAllen
Tupper, Ron (El Milagro Community Clinic), Weslaco

NAFTA & Higher Education

On: Vassberg, Stephen (Texas State Technical College), Harlingen

Written materials submitted:

For: Adams, John (self), Laredo
On: Fatemi, Dr. Khosrow (Texas A&M International University), Laredo

NAFTA & Trade

For: Reyes, Rick (Webb County Commissioner), Laredo
On: Allen, Mike (McAllen Economic Development Corporation/Border Trade Alliance),
McAllen
Olivares, Leo (University of Texas-Pan American's Center for Local Government),
Edinburg
Tully, Susan (Texas Department of Economic Development), Austin

Written materials submitted:

On: Fatemi, Dr. Khosrow (Texas A&M International University), Laredo
Santos, Emilio D. (Import-Export Produce Association), McAllen

NAFTA & Transportation

For: Reyes, Rick (Webb County Commissioner), Laredo
On: Cantu, Mauricio (Texas Department of Public Safety), Laredo

Written materials submitted:

For: DeLay, Randy (South Texas Border Partnership), Houston

On: Cuellar, Robert (Texas Department of Transportation), Austin

US Customs & Transportation

Written materials submitted:

On: Guerrero, Jr. Joel (North Texas Export Council), Rio Grande City

Corpus Christi, February 10, 1998

Dislocated Workers/Workforce

On: Garza, Dr. Maria Luisa (Gulf Coast Counsel of La Raza), Corpus Christi
Hinojosa, Walter (AFL-CIO), Austin

Laredo/Corpus Christi Partnership

For: Soto, Armando (Greater Corpus Christi Business Alliance), Corpus Christi

On: Puig, David (Laredo Development Foundation), Laredo

Written materials submitted:

On: Fatemi, Dr. Khosrow (Tx A&M International University), Laredo

NAFTA

For: Acuna Munoz, Lisa (Horton Automatics), Corpus Christi

Beteta, Armando Jr. (NAFTA Center), Dallas

Neal, Mayor Samuel L. (City of Corpus Christi), Corpus Christi

Tamez, Gonzalo (LULAC, Council #1), Corpus Christi

Villarreal, Massey (Tx Association of Mexican American Chambers of Commerce),
Corpus Christi

On: Beteta, Armando Sr. (Consul of Mexico), Corpus Christi

Cazalas, H.C. "Chuck" (CITGO), Corpus Christi

Ferguson, Dr. Robert (Tx A&M/Corpus Christi), Corpus Christi

Zepeda, Mike (self), Corpus Christi

Written materials submitted:

For: Bushell, Gary (Greater Corpus Christi Business Alliance), Corpus Christi

Small/International Business

On: Matula, Anne J. (Del Mar College), Corpus Christi

Small/Minority Business

For: McMurray, Roger (The Advanced Group), Vero Beach, FL
Ortiz, Rudy (Small Business Development Center), Corpus Christi

On: Colmenares, Robert (US Department of Commerce), Corpus Christi
Gonzales, Richard (New America Marketing), Corpus Christi

Transportation

For: DeLay, Randy (South Texas Border Partnership), Houston

On: Cockrill, Gene (Port of Brownsville), Brownsville
Griebel, Tom (Tx Department of Transportation), Austin
Moseley, Joe (Shiner, Moseley & Associates), Corpus Christi
Polinard, George M. (International Longshoremens' Association), Corpus Christi
Williamson, George T. (Port of Houston Authority), Houston

Written materials submitted:

For: Borchard, Judge Richard (Nueces County), Corpus Christi

On: LaRue, John (Port of Corpus Christi), Corpus Christi

San Antonio, April 15, 1998

Base Closures and Realignment

On: Roberson, Paul (Greater Kelly Development Corp.), San Antonio

Border Environmental Cooperation Commission ("BECC")

Written materials submitted:

On: Silva, Peter (BECC member), El Paso

Border-crossing technologies

On: Giermanski, Dr. Jim (self), Laredo

Lopez, Carlos (Texas Department of Transportation), Austin

Written materials submitted:

For: DeLay, Randy (South Texas Border Partnership), Houston

Ehinger, Robert W. (International Trade Data Systems), Washington DC

On: Mancini, Remo (Canadian Transit Co.), Windsor, Ontario

Milloy, Ross (Austin-San Antonio Corridor Council), San Marcos

Community Adjustment and Investment Program ("CAIP")

Written materials submitted:

For: Herrera, Frank (Advisory Committee-CAIP), San Antonio

Interlocal agreements

For: Avila, William T. (self), San Antonio

North American Development Bank ("NADBank")

Written materials submitted:

On: Miramontes, Victor (NADBank), San Antonio

NAFTA-General

For: Liljenwall, T.G. (Freeport Business Center), San Antonio

Mejia, Fernando (Nuevo Laredo Customs Brokers), Nuevo Laredo, TM

Against: Palmer, John (Teamsters Local #657), Universal City

On: Perez, Patricia (Laredo-US Customs Brokers), Laredo

Spector, Sandra Garza (U.N.I.T.E., AFL-CIO), El Paso

Registering, but not testifying:

On: Tully, Susan (Texas Department of Economic Development), Austin

Wattles, Dan (Texas Department of Economic Development), Austin

Written materials submitted:

For: Farias, Hector (Texas-Mexico Border International Assn), Laredo

NAFTA's Impact on San Antonio

On: Costello, Beth (City of San Antonio), San Antonio

Peak, Mayor Howard (City of San Antonio), San Antonio

Sada, Consul Carlos (Mexican Consulate), San Antonio

Wolff, Nelson (Greater Chamber of Com.), San Antonio

Written materials submitted:

On: Elizondo, Commissioner Paul (Bexar County Commissioners Court), San Antonio

Flores II, Councilman Roger (San Antonio City Council), San Antonio

Martinez, Jose (Free Trade Alliance), San Antonio

Small Business Perspective

For: Mckinley, Robert (South Texas Border Small Business Development Center), San Antonio

Appendix C: List of Texas Border Transportation Consortium Participants

Participating Members:

Joint Select Committee of the Legislature (chair)
Texas Department of Transportation
Texas Department of Public Safety
Office of the Governor
Office of the Attorney General
Texas Railroad Commission
Texas Department of Insurance
Texas Department of Economic Development

Advisory Group:

TRIBEX Private Sector Participants

Calstart
Signal Processing Systems
Booz, Allen & Hamilton
Lockheed
SAIC

Texas Border Community Representatives

Federal Agencies

U.S. Department of Transportation (Federal Highway Administration)
U.S. Treasury
Customs Service
Border Patrol
Immigration and Naturalization Service
U.S. Department of Agriculture
General Services Administration

Other Private Sector Representatives

Border Trader Alliance
ITS America
American Trucking Association
Texas Motor Transport Association
Union Pacific Railroad
Texas Mexican Railway Company